

February 27, 2017

**2017 New Zoning Ordinance, City of Santa Barbara
REVIEW OF DRAFT RECEIVED FEBRUARY 13, 2017**



Comments and Questions

1. 28.04.020. Is the determination of the L or length of contours measured by the contours at or new the top and bottom property lines?
2. 28.07.010 where there is reference to RS Residential Single Unit it refers to an "Accessory Dwelling Unit" required to meet certain "standards". Where are those standards and how are they defined? Under this same section paragraph J. Should the allowed maximum size of 1250 square feet match the State requirement under AB2299 of 1200 square feet?
3. 28.40.100 paragraph C(c). The minimum vertical clearance of seven feet is measured from where? Existing grade or proposed finish grade?
4. 28.40.100 paragraph C (e). The SFDB finds that many applicants proposed glass grade rails. The board has found those constitute "glare" as defined in the proposed definitions of this document. Do glass railings come under Table 28.07.030 (A) Development Standards-Residential Single Unit where "Materials" are defined?
5. 28.07.030 paragraph A sub-paragraph (1) Maximum Floor Area. In terms of SFDB review is the 85% FAR will this now be mandatory and not a "guideline"?
6. 28.07.030 paragraph A sub-paragraph (2a.) May this measurement of "basements" be provided with a graphic example? And is this critical if a basement and/or cellar is a non-livable area as defined in this document, in terms of floor, wall, and ceiling finishes? The SFDB board sees many projects where the issue of FAR calculations rest upon ones interpretation of grade below the floor line, particularly with regards to many existing homes built many years ago on many of the steep sloped sites within the city.
7. 28.07.030 A sub-paragraph (2d) Does this mean that all accessory dwelling units are not subject to any FAR calculations?
8. 28.07.030 B (1) Residential Single Unit Zones. Is this an attempt to address the typography of many areas of our city? A graphic might be very helpful.
9. 28.40.020 Accessory Buildings. In light of the new State law for "Secondary Dwelling Units" should any reference to "Additional Residential Building Elements" be eliminated as referred to in paragraph C?
10. 28.40.100 C. sub-paragraphs 2.c. The minimum of vertical clear of seven feet is measured from where? Finish grade or proposed grade?
11. 28.40.100 (3) bay windows. Does this mean bay windows are not allowed in side yards?
12. 28.40.100 (4) landings or outside steps. Does this address steps/landings from decks?
13. 28.40.100 C 7. Sheds. Does the definition of a shed have to meet all a. thru c.?
14. 28.40.100 E. sub-paragraphs 1. Outdoor Amenities. There is a reference of "Vertical Clearance" being measure seven feet from what point? Finish grade or existing grade?
15. 28.40.110 A Architectural Elements. Is there a conflict between the building codes requirement of 2 feet clearance and 10 horizontal distances at roof configurations for clearance to the opening of the top of chimneys? See the 2016 California Residential Code, section R1003.9 Termination.

16. 28.40.150 C (1b.) Is this 20 feet long and 20 feet wide requirement included sloped areas regardless of percentage of slope?
17. 28.40.170 Setbacks. This definition is very helpful.
18. 28.40.180 A (1.) Height Limitations, RS and R-2 are these measurements taken from existing grade or from proposed project grade? I was not able to find the definition of "Base Elevation Point".
19. 28.58.080 Conduct of Public Hearings G. Does this mean that if an item is "continued indefinitely" from a review at the SFDB it has to be re-noticed as required for the first public noticed review? The SFDB has received several complaints from the public during our meetings with regards to this current procedure.
20. 28.80.020 B. (1b.) Is a manufactured home acceptable as a secondary dwelling unit? Does SFDB have review of this type of structure?
21. 28.81.070 Garage. Should this definition also include the building department's requirement of requiring a 20 feet by 20 feet interior closed space for two car garages?

Some general comments/questions not related to SFDB

1. 28.81.080 Household. Does this mean that a residential unit is limited to 4 unrelated (as defined by law) relations?
2. 28.40.190 Street Widening Setback Lines. There is reference to areas between Mission Street and Calle Laureles being referred to "Hollister Avenue". Is that not "De La Vina Street"? Also a reference is made to "Hollister Avenue" between the city limits and Mission Street. Is this not "State Street"?
3. There appears to be no recognition of the criteria width dimension of Mission Street between US 101 and State Street. Is that being addressed elsewhere?

Respectfully Submitted



Fred L. Sweeney AIA

Julie Rodriguez

From: Deborah Schwartz <ds@mesaconsultingllc.com>
Sent: Thursday, March 02, 2017 1:05 PM
To: Community Development PC Secretary
Cc: Matt LaBrie; Danny Kato; Marck Aguilar
Subject: Fwd: NZO parking

Julie,

Please see Mr. LaBrie's public comments for today's 4-9p.m. NZO hearing.

Deborah

--

Deborah L. Schwartz
PLANNING * GOVERNMENT RELATIONS
315 Meigs Road, Suite A355
Santa Barbara, CA 93109
Direct 415-412-4224
ds@mesaconsultingllc.com

----- Forwarded message -----

From: Matt LaBrie <matt@lynxproperty.com>
Date: Thu, Mar 2, 2017 at 12:39 PM
Subject: NZO parking
To: Deborah Schwartz <ds@mesaconsultingllc.com>

Hi Deborah,

I understand PC will be looking again at changes to the NZO parking. I wish I could give my comments in person, but I won't be able to.

I'm concerned with the unintended commercial sprawl that will occur with reduced parking requirements for restaurant uses. I urge you to advocate for the 1/125 parking update to restaurants.

We will already face significant challenges in repurposing a lot of our retail space without the added challenge of spreading out the commercial vibrancy to the industrial areas like the Haley corridor.

The Funk Zone (water front) should be treated differently. It should be included in our definition of CBD. However, the NZO should not make such parking concessions for all commercial areas.

I do believe autonomous vehicles will be here sooner than we might expect. However, parking functions as a planning tool. The unintended consequences of staffs recommendation with regard to restaurant parking will have a dramatic negative effect.

Again, I urge you to support the more restrictive 1/125 outside the CBD.

Thanks



March 2, 2017

RE: New Zoning Ordinance

Planning Commission:

The Ordinances proposed on tenant displacement and the conversion of residential units to hotel or similar uses should be further modified. **The growth of the short term vacation rental market since 2008, our historically low residential vacancy rate of .5% (since 2013), 2016's hotel vacancy rate of 23.3% (as reported by the hotel industry benchmarking firm STR), and Goal #3 of the adopted *Housing Element* of the *General Plan*, dated 2011. Goal #3 states:**

Conservation and Improvement of existing housing:

"Conserve the existing housing stock and improve its condition while minimizing displacement; maintaining housing affordability; and preventing future blight or deterioration".

I would ask that the Planning Commission direct Community Development to seek further comments from: residents, the City Council and specifically the Housing Task Force on these items. Baring this, I ask that you consider adopting some or all of the modifications below to protect our residential housing market during this substantial and sustained housing crisis.

1) Adopt: Conditions of Approval for any Hotel Conversion:

- The advertisement or rental of any residential unit, or portion of one, or accessory building as a vacation/short term rental is strictly prohibited 60 days prior to applying for the a hotel conversion up until final approval.
- The advertisement or rental of any residential unit, or portion of one, or accessory building as a vacation/short term rental, other than a permitted hotel unit on the same parcel will result in the immediate revocation of the permit.
- The advertisement or rental of any residential unit, or portion of one, or accessory building in the City, other than a permitted hotel unit will result in the immediate revocation of the permit.
- Failure to comply with the stated Approval of Conditions should result in any applicant from receiving a hotel conversion for a minimum 5 years.

2) STRIKE: B (1) of Chapter 28.43 Conversion of Residential Units to Condominiums, Hotels, or Similar Uses: 28.43.040 Permit Required; Exceptions: Exceptions to Requirements for Conversion Permits.

- **B. (1):** A project creating a condominium, hotel or similar use and using no more than one existing residential unit as part of said project shall not be considered a conversion. To qualify for this exception, the number of residential units on the project site shall not have been previously reduced by use of this exception

clause. For the purposes of this exclusion, the number of existing residential unit(s) shall be determined on the date of application for the permit. If the project calls for destruction of the structure housing the residential unit(s), those units shall not be counted as existing unit(s).

- **WHY:** Any conversion of a single residential unit to a hotel or similar use should be considered a hotel conversion.

3) **Adopt:** A requirement that the Building and Safety Director shall be required to ensure that all ADA accessibility improvements required for a hotel conversion correlate to the level of ADA and disabled access typically required by Federal and State accessibility laws for a hotel.

- **WHY:** Currently the City directs the applicants for some hotel conversions to seek outside council on ADA guidelines and requirements and permits a hotel conversion without any requirements. If a hotel must follow ADA guidelines and requirements, any hotel conversion should follow the same requirements.

4) **Adopt:** A modification to Section 28.43.160, Effect of Proposed Conversion on the City's Low- and Moderate-Income.

- **ADD:** If any of the units in the project have been "affordable rental units" for **24 of the previous 48 months preceding the rental of the unit as a illegal or permitted vacation rental** the hotel conversion application shall be denied.
- **Why:** Our current housing crisis has occurred over a substantial time period and has been exacerbated as residential housings units were illegally, or permitted, removed from the residential market and rented as vacation/short term rentals. A time frame denying a conversion to a hotel that only goes back 24 of the previous 48 months preceding the application is insufficient to address this issue.

5) **Adopt:** An annual maximum number of total hotel conversions from residential housing in 28.43.180 A. Maximum Number of Conversions.

- **ADD:** 4. Annual Quota of Hotel Conversions. The maximum number of conversions to hotels to be approved during any calendar year shall not exceed the greater of:
 - a. 5; unless
 - b. A residential vacancy rate of >5% or greater is sustained for 3 or more calendar years.
- **Why:** Currently there is no annual limit to the number of the hotel conversions of single residential units. In addition, the total number of conversions for multi-unit hotel conversions is combined with condominiums, which would typically represent ownership housing. Given that 61% of the hotel conversion applications represent single unit hotel conversions it is essential that a cap on

the conversion of residential units be added. - We need to ensure that our residential housing is preserved.

- 6) **Modify and Adopt:** A change to the Exceptions in 28.43.180.
- **Modify:** The section to say that this applies to condominium conversions.
- 7) **Modify and Adopt:** A change to 28.43.170 to include a finding that supports the Goal #3 of the adopted *Housing Element* of the *General Plan*, dated 2011.
- **Modify:** The section to say that this applies to condominium and hotel conversions
 - **Add:** J. A hotel conversion will not affect the number of existing residential units in the housing stock or displacement of tenants.
 - **Why:** We must put our housing needs above the expansion of hotel rooms.
- 8) **Modify and Adopt:** A change to Chapter 28.50 Tenant Displacement Assistance.
- **Add:** Tenant Displacement Assistance would be required for all hotel conversions (including single) in all situations.

Lastly, considering our current dilemma with should the conversion of residential unit to a hotel or similar uses be allowed by right considering our historic residential vacancy rate?

Thank you for your time and consideration.

Sincerely,



Anna Marie Gott



Santa Barbara Association of REALTORS®

October 7, 2016

Chair Jay Higgins
Vice-Chair Lesley Wiscomb
Commissioner John Campanella
Commissioner Mike Jordan
Commissioner Sheila Lodge
Commissioner Deborah Schwartz
Commissioner Addison Thompson
630 Garden Street
Santa Barbara, CA 93101

RECEIVED
MAR 02 2017
CITY OF SANTA BARBARA
PLANNING DIVISION

RE: Draft New Zoning Ordinance

Dear Chair Higgins and Commissioners,

The Santa Barbara Association of REALTORS® (SBAOR) represents roughly 1,200 REALTORS® throughout the South Coast and our mission includes engaging in real estate related community issues affecting our members and/or their clients. As you know, SBAOR has been following the New Zoning Ordinance process and we have comments and concerns regarding the Draft New Zoning Ordinance (NZO).

Issue: The Minor Zoning Exception process in the NZO does not actually provide a streamlined administrative review, and appeal rights from certain Minor Zoning Exception decisions are too limited.

Review Process Not Really Streamlined

The purpose of the New Zoning Ordinance is to streamline development review and approval processes as well as provide more flexibility in the application of development standards by creating administrative approvals for certain exceptions to those standards. Some portions of the NZO achieve this goal and to further this along, SBAOR concurs with the staff recommendation to expand the list of improvements located in the front or interior setbacks that could be allowed by a Minor Zoning Exception (MZE). However, there is a lack of streamlining the administrative process for minor setback encroachments because under the MZE process there are still public notice and hearing requirements and discretionary standards for determining whether to permit an encroachment. The applicant must go through a public notice and hearing process and follow the standards for approval required of the Design Review body to determine:

- That the exception granted will not be detrimental to the use and enjoyment of other properties in the neighborhood;
- That the improvements are sited to minimize impacts to neighboring properties;
- That the project generally complies with standards in the Single Family Design Board Good Neighbor Guidelines; and
- The improvements are compatible with existing development and neighborhood character.

Because it requires a noticed public hearing and provides the reviewing body with discretionary standards to apply in its review, the NZO does not streamline the approval of minor deviations from development standards as substantially as it might have. A truly streamlined administrative process would, for example, have applications for Minor Zoning Exceptions undergo staff-level review, subject to

Santa Barbara Association of REALTORS® | 1415 Chapala Street | Santa Barbara, CA 93101

(805) 963-3787 | (805) 966-9664 FAX | www.sbaor.com



REALTOR® is a registered trademark that identifies a professional in real estate who subscribes to a strict code of ethics as a member of the National Association of REALTORS®

objective standards, within a specified and short timeframe. The application would proceed to the Design Review body for consideration only if it did not meet the objective standards.

Curtailed Appeal Rights

SBAOR urges you to reject the staff report recommendation on transferring the responsibility for fence/hedge MZE's to the Design Review bodies and keep them within the purview of the Staff Hearing Officer/Community Development Director. As mentioned above, it's important to keep this process streamlined, which it is not with the Design Review bodies. Furthermore, as with any decision made within the City, the appeals process needs to be the same if you have a decision from a Staff Hearing Officer, Community Development Director, or Review Body. We recommend allowing any decisions made by the Staff Hearing Officer to be appealable to not only the Community Development Director, but also allow the applicant the right to appeal to the Planning Commission and/or City Council.

Issue: The newly permitted encroachments and alterations within setbacks are only permitted if the abutting property owner consents.

The Staff Report points out that the NZO expands the list of improvements that may be located in a front or interior setback if approved as a Minor Zoning Exception. These provisions are:

- 28.40.100D(2)(b): Uncovered decks, no higher than 18 inches above existing grade, may be permitted to encroach into any interior setback, but not closer than two feet to a property line.
- 28.40.120E(1): Fences or hedges may be located on or within a required setback of an interior property line.
- 28.40.240A(6): Waste, recycling and other similar receptacles provided by the City may be stored within any interior setback.
- 28.45.040B(1)(c): Alterations to a nonconforming structure may be approved within an interior setback, if the portion of the roof within the setback does not increase by more than 42 inches or result in an overall roof pitch greater than 4:12.
- 28.45.040B(2)(a) and B(3)(a): Alterations to create new windows, doors, or other openings, or relocate or enlarge existing ones located in a portion of a structure that is nonconforming as to the interior setback may be approved.

All of these provisions also require consent of the adjacent property owner before the City may grant the requested Minor Zoning Exception. Although a neighboring property owner's acquiescence or agreement to an encroachment into an interior setback may be a factor that the City should consider when reviewing an application for a Minor Zoning Exception, it should not be an absolute requirement. The relationship between any two given neighbors and the relative sensitivity of a particular neighbor should not determine whether a setback encroachment is allowed. If a proposed encroachment does not pose any health or safety problem from an objective standpoint, why should the City deny a request for Minor Zoning Exception simply because a neighbor, who may be unreasonable, or looking to use the right of approval to extract payment or some other benefit from the applicant, objects?

Issue: The NZO may require certain projects in the development pipeline to be redesigned and obtain additional relief when the NZO takes effect.

During the multiple NZO meetings, it was discussed that an applicant may choose which Zoning Ordinance best would apply to their project instead of demanding compliance with the NZO. Does the staff recommendation suggest this? If it doesn't, we recommend you take into account those project that have *submitted* building or land use permit applications be able to choose the Zoning Ordinance which would pertain to their project. It's important to remember that depending on the nature and extent of the differences between the Current Ordinance and the NZO, as applied to that project, this may be an expensive process both in terms of the engineering, architectural, and legal work involved



and due to the delay caused by having to re-start the permitting process. This may impact the availability and cost of financing and the feasibility and successful completion of the project. There may even be circumstances where a project conceived under the Current Ordinance is simply infeasible under the NZO.

Issue: Inconsistency between Condominium Conversion and the Residential Use Classifications.

The NZO establishes additional, and different, interior standards specifically for Condominium Conversions (i.e. these apply to the conversion of existing rental apartments and other residential buildings into condominium units, but not to units originally built as condominiums). The minimum unit size for a converted condominium is set at 600 square feet. There are also several other requirements in the NZO that relate to interior design or other health and safety code requirements and apply specifically to buildings that are converted into condominiums. These include: the location and maintenance of smoke detectors and fire protection systems; insulation to prevent sound transmission, including that floor coverings may only be replaced by other floor coverings providing the same or greater insulation; separate utility metering; provision of at least 200 cubic feet of enclosed, weatherproofed, and lockable private storage accessible from a garage or parking area; that laundry facilities be provided on site at a minimum of one washer and dryer per five units or in-unit; that the owner certify to each purchaser that all appliances and equipment are in working condition at the time of the sale; and that all elements of the condominium have "high quality appearance and safety." Whereas, Section 28.40.160 applies to all Residential Use Classifications except Group Residential and Community Care Facilities, Residential Care Facilities for the Elderly and Hospices. It establishes various requirements for residential units. It requires a minimum of 220 square feet of livable floor area for a studio unit and 400 square feet of livable floor area for other residential units. In order to avoid confusion, Condominium Conversions should adhere to the same standards as Residential Use Classifications.

Issue: Certain proposed parking requirements are excessive.

The NZO reorganizes and, in many cases, significantly revises the parking requirements. Specific off-street parking requirements are presented in a table format, which makes them easier to understand. Substantively, however, some of the provisions arguably are excessive and may create unwarranted burdens on property owners and developers.

Covered Parking

The parking requirements distinguish between covered and uncovered parking spaces, and generally require that single-unit residential uses provide two *covered* parking spaces for each unit. The NZO permits one covered and one uncovered space if a lot is less than 15,000 square feet and is developed with less than 85 percent of the maximum net floor area for the lot. It permits two *uncovered* spaces if the smaller lot is developed with less than 80 percent of the maximum net floor area. Also, small residential units with 600 square feet or less of livable floor area are only required to provide one uncovered space. It is not clear why the size of the unit or the lot should affect the determination of whether a parking space is covered or uncovered. The NZO effectively dictates the form that single-unit residential uses must take, without regard for consumer preference and the additional costs that constructing covered parking imposes on developers and owners.

Warehouse

The NZO would require 1 space for every 1,000 square feet of net floor area for Warehouse and Storage uses. While the anticipated parking demand can be a function of the size of the use, in the case of warehouse and storage uses, the size of the building or lot does not necessarily have any direct bearing



on the parking demand generated by the use. Additionally, the rate appears to be a significant increase in required parking over the Current Ordinance, which requires one space per 5,000 square feet (except for any office area which must meet the office requirements).

Parking Separation

Section 28.47.040B(1) permits that the number of spaces in a shared parking area (other than one serving shopping centers and accessory uses) be calculated based on the individual parking rates for each separate use, but only if the parking spaces serving each use are physically separated with fixed barriers. Otherwise, the parking requirements are calculated using the highest rate for the entire building. It is not clear why the parking spaces for each use in a development having multiple uses must be physically separated from each other and cannot be shared. Adequate shared parking is the preferred approach for mixed use developments because it allows for a decrease in the overall number of required parking spaces, reducing development costs and encouraging more compact development. This provision of the NZO will make projects more costly, will complicate site design, and may make it more difficult and confusing for people who use the parking area.

Parking in Setbacks

Section 28.47.060B prohibits any automobile or bicycle parking in front setbacks, except for required uncovered bicycle parking which may be located in a front setback for commercial and mixed-use developments. This provision is overly restrictive, in that it does not appear to allow for parking in a residential driveway within the front setback area. Further, it does not appear to contemplate off-street parking constraints that nonconforming properties might have. In some cases, the driveway within a front setback may be the only location where off-street parking fits on a lot.

Landscaping

Section 28.47.080A requires that parking areas for multi-unit residential, nonresidential or mixed-use developments be landscaped and that landscape and irrigation plans submitted for approval be prepared by a licensed landscape architect. This provision effectively requires that an applicant retain professional services in order to comply with the parking lot provisions. For small projects, this may prove to be uneconomical given the amount of landscaping that will be provided. Although this section does permit the Review Authority to waive this requirement, there is no guaranty that it will be waived in all instances where it is overly burdensome to the applicant.

Issue: The section on Nonconforming Structures, Site Development and Uses, contains provisions that unnecessarily limit alterations and reconstruction of nonconforming structures.

Demolition and Replacement of Nonconforming Structures: Section 28.45.080 permits the demolition and reconstruction of nonconforming structures subject to certain limitations. The limits on reconstruction are unnecessarily restrictive. For example, Section 28.45.80B(2) states: "The new structure shall not exceed the height of the existing structure, and the new structure shall comply with all current applicable height limitations." This effectively limits height to the *lesser* of the height of the structure being replaced and the current applicable height limitations under the NZO. This and other similar limits would have the effect of imposing dimensional limits on reconstructed and replacement buildings that are *more restrictive* than the otherwise applicable dimensional requirements in the NZO. This could be a significant constraint on the ability to replace a non-conforming existing house with a larger new house. The Section 28.45.080 limitations on rebuilding non-conforming structures will seemingly prevent the owner of a lot that contains a non-conforming structure that is demolished from rebuilding to the full extent that would otherwise be allowed at that location under the NZO.



Issue: The NZO permits tenants to terminate leases when units are going to be removed from the market, which is unfair and interferes with the contractual relationship between landlord and tenant. In California, landlords have the express right under the Ellis Act to “go out of business” by removing rental units from the rental market, whether by converting them into condominium ownership or demolishing them to permit other construction. Specifically, the Ellis Act prohibits a city from compelling an owner to offer or continue to offer property for rent or lease. However, the Ellis Act does not prohibit a city from restricting the landlord’s reentry into the market after units have been removed. Further, when rental units are subject to a rent control ordinance, a city can require that the owner provide notice of the owner’s intent to remove the units and can require the owner to make relocation assistance payments.

Two sections of the NZO establish certain tenant protections when rental units are removed from the market. One of these deals specifically with conversions of apartments to condominiums, cooperatives, or hotels. The other concerns tenant displacements resulting from any demolition of a rental unit on a lot, alteration of a structure that reduces the number of rental units on a lot, conversion of a single residential unit to a condominium unit, and a change in use from residential to nonresidential. The tenant protections include notice of the owner’s application that will result in a conversion, the a right of first refusal for the initial sale of the unit, and entitlement to moving expenses up to \$5,000 or “four times the median advertised rental rent.” Additionally, the NZO authorizes tenants to terminate their leases after receiving the required notice, without any further obligation to pay rent.⁷⁸ In the case of tenant displacements not occurring as a result of a condominium conversion, the tenant does not even have to forfeit its right to moving expenses.

These provisions effectively permit a tenant to break the contractual provisions contained in a privately negotiated lease, notwithstanding the terms of those contracts, depriving the landlord of their contractual right to receive rental income from the property. The owner must notify the tenant of intent to convert the unit at least 60 days before the owner may submit an application to the City. The tenant may terminate the lease any time after receipt of the notice. Therefore, units may be left vacant for several months while the land use applications are pending, with the owner losing the expected and contracted for rental income. This regulation is unfair to landlords and interferes with the contractual relationship between landlord and tenant.

Issue: The NZO contains vague provisions that may be subject to challenge.

Under the “void for vagueness” doctrine, a land use ordinance can be held invalid if its language lacks sufficient clarity or certainty, making it subject to arbitrary interpretation, application, and enforcement. The “void for vagueness” doctrine is a constitutional doctrine rooted in the procedural due process clause of the Fourteenth Amendment to the U.S. Constitution. The U.S. Supreme Court has stated that “[a]n ordinance is unconstitutionally vague when men of common intelligence must necessarily guess at its meaning.”

A lack of precision and clarity in a zoning ordinance can lead to uncertainty on the part of property owners as to what is required or desired and can make it difficult for local officials and boards to provide guidance and apply the provisions consistently. Several requirements in the NZO incorporate terms that are arguably vague, and therefore susceptible to inconsistent and unfair interpretation and application and are subject to invalidation under the void for vagueness doctrine.

Findings Required for Community Benefit Projects to Exceed Height Limitations



Section 2.840.110B(1) lists the findings that the City must make in order to permit a Community Benefit Project to exceed the established height limitations in the relevant zone. These provisions are quoted below with the vague language emphasized.

b. Architecture and Design. The project will be ***exemplary*** in its design;

c. Livability. If the project includes residential units, the project will provide amenities to its residents which ***ensure the livability of the project*** with particular attention to good interior design features such as the amount of light and air, or ceiling plate heights; and

d. Sensitivity to Context. The project design will complement the setting and the character of the neighboring properties ***with sensitivity to*** any adjacent federal, state, and City Landmarks or any nearby designated Historic Resources, including City-designated Structures of Merit.

It is unclear what these provisions mean and what an applicant must do in order to comply with them.

Open Yards

Section 28.40.150D establishes the development standards for open yards applicable to all residential uses in all districts. Subsection 3 requires that “open yards...be protected from vehicles by a ***physical barrier***.” The term “physical barrier” is not defined in the NZO and it is not clear what exactly it means. Must owners install fencing? Is curbing sufficient? The examples above are not an exhaustive list but are representative of vague language found in the NZO. The lack of clarity makes it difficult for a developer to know whether a proposal will be approved and may allow for the City to arbitrarily treat applicants inconsistently.

Issue: The length of, and detail in, the NZO may make it difficult for property owners and City staff to understand and implement.

One of the goals for drafting a new zoning ordinance for the City was to create an ordinance that is easier to understand, offering more flexibility in its administration. The result is certainly better organized than the Current Ordinance. However, the overall length of the NZO and level of regulatory detail will likely make it cumbersome for property owners and City staff to understand and administer. This draft contains approximately 500 pages of text and maps and will only expand as various figures are finalized and included. By including so much detail in the NZO, the City has made the policy decision to tightly control site and building design rather than truly simplify the ordinance and allow more flexibility in its administration. Overall, the changes to the NZO appear to be primarily organizational with little substantive simplification. Continuing to have a zoning ordinance that is so prescriptive of design and so long and complex may make it very difficult for property owners to understand and comply with the regulations, and may make it difficult for City staff to implement and enforce it.

Issue: Short-Term Rentals were not supposed to be addressed within the NZO, but they are mentioned several times in various sections.

Short-Term Rentals are addressed several times throughout the NZO, specifically within Chapter 28.43 Conversion of Residential Units to Condominiums, Hotels, or Similar Uses, and Chapter 28.81.180 Residential Use.

Conversion of Residential Units to Condominiums, Hotels, or Similar Uses

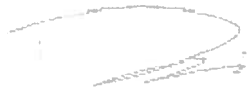
The current Zoning Ordinance defines the purpose of a conversion “to establish criteria for the conversion of *existing multiple family rental housing* to condominiums, community apartments, hotels or similar uses”. The NZO defines the purpose of a conversion “to establish criteria for the conversion of *existing housing* to condominiums, community apartments, cooperative apartments, hotels or similar uses”. This drastically changes the purpose of conversions and purposely includes Short-Term Rentals.

Residential Use Definition

The NZO definition of Residential Use is "a structure or portion of a structure designed and used as a permanent place of human habitation by its occupants. *A residential use does not include structures or portions of structures designed or used as the temporary abiding place for individuals for less than 30 consecutive days*". This language establishes specific occupancy length and therefore maneuvers around the reassurances during this process that Short-Term Rentals were not to be addressed.

Thank you for taking the time to consider our comments and concerns and should you need additional information, please do not hesitate to contact the Santa Barbara Association of REALTORS® office.

Sincerely,



David Kim
2017 President



March 1, 2017

Jay Higgins, Chair
City of Santa Barbara Planning Commission
630 Garden Street
Santa Barbara, CA 93101

Delivered via E-mail



Page 1 of 4

RE: Comments on Draft New Zoning Ordinance - March 2, 2017 Agenda Item III

Dear Mr. Higgins and Planning Commissioners.:

Vanguard Planning Inc. represents multiple clients throughout the City of Santa Barbara (the "City"). I support the City's effort to update and streamline the existing zoning ordinance currently adopted as Title 28 of the Santa Barbara Municipal Code (the "SBMC"). I have previously participated in workshops to gather input for the New Zoning Ordinance (the "NZO") and I appreciate this opportunity to provide comments for consideration at your hearing tomorrow, which I am unable to attend due to a scheduling conflict.

Any changes to the adopted SBMC accomplished through the NZO or any other means must be reviewed and approved by the California Coastal Commission (the "CCC") and certified before these may take effect within the Coastal Zone. The City must ultimately receive approval of a Local Coastal Program (the "LCP") amendment or submit and receive certification of a complete update to its LCP before NZO standards may be applied within the Coastal Zone. For example, the City's AUD Program, adopted into the SBMC in 2013, currently is still not in effect within the Coastal Zone because the City has not processed an associated LCP Amendment.

As discussed herein, the Draft NZO includes new standards that directly conflict with the CCC's interpretation of the City's current SBMC, and may therefore never be approved within the Coastal Zone. This may ultimately result in a situation where property owners with identical zoning classifications (such as R-4) are subject to a substantially different set of permitted uses depending upon the location of their property within, or outside of the Coastal Zone. Intentional adoption of NZO language that has the potential to lead to this situation is inconsistent with sound planning and zoning practice.

1.0 Definition of "Residential Use" - NZO Sec. 28.81.180

The NZO attempts to establish a new definition, "*Residential Use*," that does not exist and has no parallel in the current SBMC. **ATTACHMENT A** includes SBMC Secs. 28.04.555 through 28.04.595 (the definitions that start with "R"). The City's current definition for "*Residential Unit*" as set forth in SBMC Sec. 28.040.590 speaks only to use and physical configuration. The proposed NZO language for "Residential Use" per NZO Sec. 28.81.180 (**ATTACHMENT B**) is as follows:

***"Residential Use.** A structure or portion of a structure designed and used as a permanent place of human habitation by its occupants. A residential use does not include structures or portions of structures designed or used as the temporary abiding place for individuals for less than 30 consecutive days."*
(emphasis added)

This new defined term establishes length-of-occupancy as a component of *"Residential Use."* Obviously, this has substantial and material implications with respect to the use of residential structures for Short-Term Vacation Rental (hereinafter "STVR") use.

My clients and I have received multiple reassurances from City staff that STVR's are not addressed in the NZO. This appears to be inaccurate. Establishing length-of-occupancy requirements directly impacts use of property and structures as STVR's. It appears that the *"Residential Use"* definition is specifically intended to serve as a tool the City can later use to establish a de-facto permit requirement for STVR's without properly defining this land use and adopting an ordinance to address it. The NZO should include a specific definition for STVR's and if necessary, additional ordinance requirements applicable to this land use.

It is likely that the NZO does not include a specific definition and/or any use-specific ordinance standards for STVR's due to a conflict between the how the City desires to prohibit/regulate STVR's and the manner in which the CCC interprets local zoning ordinances with respect to this land use.

The City asserts current STVR projects (for which no permit is required under the adopted SBMC or LCP), represent *conversion* from residential to commercial use. The City then employs application of onerous commercial standards, non-residential growth management requirements, coastal development permit requirements/findings, development plans, modifications, and other requirements to make it both cost-prohibitive and procedurally infeasible to establish a legal STVR.

ATTACHMENT C is a letter from the CCC to the City regarding a specific STVR "conversion" at 128 Natoma Street. With respect to the City's characterization of STVR's as *"Hotels"* the CCC states:

"... we disagree with the City's current approach to consider residences used as STVR's as 'hotel' uses ... for the purpose of prohibiting or limiting STVR's in residential zones."

The CCC states in the same letter:

"Due to their function as a high priority visitor-serving use, the Coastal Commission has generally interpreted local zoning ordinances in a broad fashion and found that short term rentals are a form of residential use, permitted by right, in any residentially zoned area unless such uses are specifically prohibited or otherwise restricted." (emphasis added)

The proposed new definition, "Residential Use," seeks to formally characterize any structure occupied *"for less than 30 consecutive days"* as *"non-residential."* This is an attempt to establish an adopted ordinance basis for the City to implement the myriad requirements/standards it currently imposes arbitrarily for the purposes of prohibiting and regulating STVR's.

The NZO definition of "Residential Use," subjects STVR's to multiple layers of standards that, in most cases, cannot be satisfied. The City's attempt to define any structure (or portion of a structure) as *"non-residential"* so that it may subsequently impose prohibitive requirements that effectively prohibit this land use is inconsistent with existing City LCP policies and Coastal Act Policies. With respect to this issue, the CCC states: *"... vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act."* Given this policy stance, it is extremely unlikely that

the CCC would certify a LCP Amendment or Update that attempts formally to impose prohibitions of STVR's that the City currently accomplishes through the arbitrary and un-adopted administrative interpretation of the SBMC.

Clearly disclosed restrictions and prohibitions, as might be proposed through NZO language that clearly and specifically attempts to regulate STVR's, would almost certainly be rejected by the CCC. The indirect and vague approach the City is attempting in this case is also likely to be rejected by the CCC. As a result, the "Non-Residential" definition potentially may never be in effect for properties within the Coastal Zone. Properties within a given zone district, for example the R-4 zone which allows STVR's as a permitted use, will be subject to prohibitive standards in some parts of the City, and properties in the same zone district, but within the Coastal Zone, would not be subject to these same standards. The City has an opportunity to avoid this. I respectfully request that your Commission direct staff accordingly. This should include direction to modify the definition of "Residential Use," deleting any specified length-of-occupancy requirements.

2.0 Conversion of Dwelling Units to Condominiums, Hotels, or Similar Uses - NZO Chapter 28.43

SBMC Chapter 28.88 (**ATTACHMENT D**) sets forth provisions for "Conversion of Dwelling Units to Condominiums, Hotels, or Similar Uses." SBMC Sec. 28.88.010 identifies the purpose of the Chapter. SBMC Sec. 28.88.010.A identifies the first purpose as follows:

"To establish criteria for the conversion of existing multiple family rental housing to condominiums, community apartments, cooperative apartments, hotels or similar uses." (emphasis added)

The NZO, in Sec. 28.43.010.A (see **ATTACHMENT E**) alters this purpose as follows:

"To establish criteria for the conversion of existing housing to condominiums, community apartments, cooperative apartments, hotels or similar uses." (emphasis added)

This is a material change that substantively modifies the purpose of the ordinance. The current SBMC language identifies "conversion of multiple family rental housing." The NZO attempts to dramatically expand the applicability of this Chapter to "conversion of existing housing" which comprises residential units that are not part of the rental housing market.

Though conversions of two-or more existing residential units that are owner-occupied, or otherwise not used as "rental" units are not subject to SBMC Chapter 28.88, City staff arbitrarily processes "conversion" of such units to STVR's subject to this Chapter based on an administrative interpretation of the SBMC. The City now seeks, through the NZO, to expand the applicability of its hotel conversion requirements so that it may have an adopted basis to apply additional standards and restrictions to STVR use of residential units not currently subject to these requirements.

I anticipate this proposed NZO language will be rejected by the CCC given: 1) the CCC's interpretation of the City's zoning ordinance and LCP; and, 2) due to the potential inconsistency of this language (which serves to restrict/prohibit STVR use) with LCP and Coastal Act policies.

As discussed above in Section 1.0, the proposed NZO language in Sec. 28.43.010.A is likely to result in substantially different permitted land use rights for properties with identical zoning classifications depending upon where those properties are located. The current language in SBMC Sec. 28.88.010.A, which identifies the *original* intent of City decision-makers to retain *rental* units, should be retained.

Thank you for taking the time to review this. You can reach me via E-mail at jarrett.gorin@vanguardplanning.com, or give me a call at (805) 966-3966.

Sincerely,

VANGUARD PLANNING INC.



Jarrett Gorin, AICP
Principal

ATTACHMENTS

- A. SBMC Secs. 28.04.555 through 28.04.595
- B. NZO Sec. 28.81.180
- C. California Coastal Commission Letter dated January 10, 2017
- D. SBMC Chapter 28.88
- E. NZO Chapter 28.43

cc: George Buell, Community Development
Renee Brook, Community Development
Jack Ainsworth, California Coastal Commission
Jaqueline Phelps, California Coastal Commission
Joseph Liebman, Esq.

ATTACHMENT A

SBMC Secs. 28.04.555 through 28.04.595

28.04.500 Nonconforming Use.

A use of a building or land which does not conform to the regulations of this ordinance and which lawfully existed at the time the regulations with which it does not conform became effective. (Ord. 3710, 1974; Ord. 2585, 1957.)

28.04.505 Non-Transient Tenant.

A person who has resided in a residential hotel for a period of more than 30 days as of the time a development application is submitted for that residential hotel. (Ord. 4984, 1996.)

28.04.510 Owner.

Any individual, firm, association, syndicate, copartnership, corporation, trust or any other legal entity having sufficient proprietary interest in the land sought to be converted to commence, maintain, and complete proceedings to convert the same under this ordinance. (Ord. 4000 §1, 1979.)

28.04.515 Parcel.

A general term including all plots of land shown with separate identification on the latest equalized county assessment roll. Parcels may or may not be separate lots, depending upon whether or not such parcels are created as required by the Subdivision Ordinance. (Ord. 4000 §1, 1979.)

28.04.520 Patio.

A hardscaped (e.g., concrete, tile, brick, stone, etc.) space, constructed on the ground, usually adjoining a building and intended for indoor-outdoor living and recreation. A patio may be surrounded by walls or roofed, but not both. (Ord. 5459, 2008.)

28.04.525 Planned Residence Development.

One (1) or more contiguous parcels of land in a single ownership or planning control which shall be planned and developed as a single unit, under provisions of this ordinance, in a manner which shall be in harmony with the basic characteristics of the land use zone district in which it is located. (Ord. 3710, 1974; Ord. 2892, 1962.)

28.04.530 Porch.

A raised platform, usually roofed and sometimes partly enclosed with low walls, that extends along an outside wall of a building, usually at an entrance to a dwelling. A porch may also be referred to as a veranda. (Ord. 5459, 2008.)

28.04.535 Public Facility.

A facility open to the public and owned or operated by a governmental entity. (Ord. 4152, 1982.)

28.04.540 Public Utilities.

The general classification for public water, gas, sewer, electrical, cable television and telephone lines and facilities; does not include natural or improved drainage facilities. (Ord. 4000 §1, 1979.)

28.04.545 Public Works Director.

The Public Works Director or any of his deputies or assistants. (Ord. 4000 §1, 1979.)

28.04.550 Quasi-Public Facility.

A facility that is open to the public and has a public purpose but is not owned or operated by a governmental entity. A community center, a public museum, and an art gallery are examples of a quasi-public facility. (Ord. 4152, 1982.)

28.04.555 Recreational Vehicle.

A. RECREATIONAL VEHICLE. A motor home, slide-in camper, travel trailer, truck camper, or camping trailer, with or without motive power, designed for human habitation for recreational or emergency occupancy.

B. CAMPING TRAILER. A vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite and designed for human habitation for recreational or emergency occupancy.

C. **MOTOR HOME.** A vehicular unit built on or permanently attached to a self-propelled motor vehicle chassis, chassis cab or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

D. **SLIDE-IN CAMPER.** A portable unit, consisting of a roof, floor and sides, designed to be loaded onto and unloaded from the bed of a pickup truck, and designed for human habitation for recreational or emergency occupancy and shall include a truck camper.

E. **TRAVEL TRAILER.** A portable unit, mounted on wheels, of such a size and weight as not to require special highway movement permits when drawn by a motor vehicle and for human habitation for recreational or emergency occupancy. (Ord. 4269, 1984.)

28.04.560 Recreational Vehicle Park.

Recreational vehicle park includes a permanent recreational vehicle park and overnight recreational vehicle park as defined in this Chapter. (Ord. 4269, 1984.)

28.04.565 Recreational Vehicle Park (Overnight).

Any area of land where two (2) or more recreational vehicle spaces are rented, or held out for rent, to owners or users of recreational vehicles used for travel or recreational purposes for less than thirty (30) days. (Ord. 4269, 1984.)

28.04.570 Recreational Vehicle Park (Permanent).

An area of land where two (2) or more recreational vehicle spaces are rented, or held out for rent, to accommodate recreational vehicles for residential purposes for thirty (30) or more days. (Ord. 4269, 1984.)

28.04.575 Recreational Vehicle Space.

That portion of a recreational vehicle park set aside and designated for the occupancy of one (1) recreational vehicle, including any contiguous area designed or used for automobile parking, carport, storage, awning, cabana or other use which is clearly incidental and accessory to the primary use of the space. (Ord. 4269, 1984.)

28.04.580 Residential Care Facility for the Elderly.

A housing arrangement where the residents are at least sixty years of age and where varying levels of care, supervision, or health-related services are provided to the residents based on their varying needs. Persons under 60 years of age with compatible needs may be allowed to be admitted or retained in such a facility, not to exceed 25 percent of the residents, as further defined in Chapter 3.2 of Division 2 of the California Health and Safety Code. (Ord. 4858, 1994.)

28.04.585 Residential Hotel.

A hotel or boarding house or similar residential facility where, on the date of the adoption of this ordinance, the average duration of stay for the residents thereof exceeds thirty (30) days. (Ord. 4984, 1996.)

28.04.590 Residential Unit.

A. A building or portion thereof designed or occupied for residential purposes, containing not more than one (1) kitchen per residential unit, but not including hotels or boarding houses.

B. A residential unit may be declared by the Community Development Director when a building or portion thereof is configured or occupied for residential purposes, whether permanent or temporary, and contains elements evidencing separate residential occupancy. Elements to be considered may include, but are not limited to, the proximal arrangement and various combinations of:

1. Sink or bar sink;
2. Garbage disposal;
3. Dishwasher;
4. Toilet;
5. Bathing facility;
6. Interior locking doors;
7. Exterior entrance;
8. Exterior staircase;
9. Separate yard, patio, deck or balcony;
10. Separate phone line, cable line, or utility line;
11. Separate garage or parking area (covered or uncovered) or carport;
12. Countertops or cupboards;
13. Sleeping loft; or

14. Separate address/mail box designation.

Issuance of a building permit or other approvals does not, of itself, establish that a building or portion thereof is not a residential unit.

C. Notwithstanding this Section, a building or portion thereof configured or occupied for residential purposes, whether permanent or temporary, containing a modular cooking unit shall not be deemed a residential unit providing:

1. A performance standard permit or conditional use permit has been issued pursuant to either Chapter 28.93 or Chapter 28.94 of this Code; and

2. The facility has current, valid state licenses to operate a residential care facility for the elderly, community care facility or hospice; and

3. There is a staffed congregate kitchen and dining facility on-site providing regular meals to all residents. (Ord. 5380, 2005; Ord. 4858, 1994.)

28.04.595 Rough Grade.

The stage at which the grade approximately conforms to the approved plan. (Ord. 5416, 2007.)

28.04.600 School, Elementary or High.

An institution of learning which offers instruction in the several branches of learning and study required to be taught in the public schools by the Education Code of the State of California. High schools include junior and senior, parochial and private. (Ord. 3710, 1974; Ord. 2585, 1957.)

28.04.605 Secondary Dwelling Unit.

A separate, complete housekeeping unit consisting of two (2) or more rooms for living and sleeping purposes, one of which is a kitchen, and having a maximum square footage of six hundred (600) square feet, that is substantially contained within the structure of a one-family dwelling. (Ord. 4225, 1983.)

28.04.610 Self-Service Laundry.

Any establishment for laundering where there is no pick-up or delivery service and no steam or hand laundry of any type; provided, however, that all washing machines and accessory extractors and dryers shall be installed on a single floor and there shall be no intermingling of customers' laundry. (Ord. 3710, 1974; Ord. 2585, 1957.)

28.04.615 Service Station.

Service station includes both automobile service stations and automobile service station/mini-markets. (Ord. 4033 §3, 1980.)

28.04.620 Setback, Front.

An area between the front lot line and a line parallel to the front lot line bounded by the interior lot lines of the lot that are roughly perpendicular to the front lot line, the depth of such area being the distance required by this zoning ordinance. The front setback is to be provided and maintained as an open space on a lot or parcel of land, unoccupied and unobstructed from the ground upward, except as otherwise provided in this title. (Ord. 5459, 2008.)

28.04.625 Setback, Interior.

An area between an interior lot line and a line parallel to the interior lot line bounded by the two lot lines adjacent to the interior lot line from which the setback is measured, the depth of such area being the distance required by this zoning ordinance. The interior setback is to be provided and maintained as an open space on a lot or parcel of land, unoccupied and unobstructed from the ground upward, except as otherwise provided in this title. (Ord. 5459, 2008.)

28.04.630 Single Residential Unit.

A residential building configured as not more than one (1) residential unit and occupied by not more than one household. (Ord. 4924, 1995; Ord. 4858, 1994.)

28.04.635 Skilled Nursing Facility.

A State-licensed health facility or a distinct part of a hospital which provides continuous skilled nursing care and supportive care to patients whose primary need is for the availability of skilled nursing care on an extended basis. It provides 24-hour inpatient care and, as a minimum, includes physician, nursing, dietary, pharmaceutical services and an activity program. Intermediate care programs which provide skilled nursing and supportive care for patients on a less than continuous basis shall be considered skilled nursing facilities for the purposes of this Ordinance. "Skilled Nursing Facility" and "Intermediate Care Facilities" are further defined in Chapter 2, Division 2 of the California Health and Safety Code. (Ord. 4858, 1994.)

ATTACHMENT B

NZO Sec. 28.81.180

Pre-existing. In existence prior to the effective date of this Title.

Project. Any proposal for a new or changed use, or for new construction, demolition, alteration, or additions to any structure, that is subject to the provisions of this Title.

Public Resources Code. The Public Resources Code of the State of California.

Public Works Director. The Public Works Director of the City of Santa Barbara, or designee.

28.81.170 "Q"

Reserved

28.81.180 "R"

Recreational Vehicles

Recreational Vehicle. A motor home, slide-in camper, travel trailer, or camping trailer, with or without motive power, designed for human habitation for recreational or emergency occupancy.

Camping Trailer. A vehicular portable unit mounted on wheels and constructed with collapsible partial sidewalls which fold for towing by another vehicle and unfold at the campsite and designed for human habitation for recreational or emergency occupancy.

Motor Home. A vehicular unit built on or permanently attached to a self-propelled motor vehicle chassis, chassis cab or van, which becomes an integral part of the completed vehicle, designed for human habitation for recreational or emergency occupancy.

Slide-In Camper. A portable unit, consisting of a roof, floor and sides, designed to be loaded onto and unloaded from the bed of a pickup truck, and designed for human habitation for recreational or emergency occupancy and shall include a truck camper.

Travel Trailer. A portable unit, mounted on wheels, of such a size and weight as not to require special highway movement permits when drawn by a motor vehicle and for human habitation for recreational or emergency occupancy.

Repair and Maintenance. The replacement of existing materials with similar materials in a similar manner. Repair and maintenance does not include: additions, alterations, or demolition to any structure; changes in site development; a substitution of or a change to a nonconforming use; or an increase in area occupied by a nonconforming use.

Residential Property. Any real property, zoned, designed or permitted to be used for any residential purpose, including any buildings or structures located on said improved real property.

Residential Unit. Any building or portion thereof that contains living facilities, including provisions for sleeping, eating, cooking, and sanitation, for not more than one household. Section 28.40.160, Residential Unit.

Residential Use. A structure or portion of a structure designed and used as a permanent place of human habitation by its occupants. A residential use does not include structures or portions of structures designed or used as the temporary abiding place for individuals for less than 30 consecutive days.

Review Authority. Body responsible for making decisions on zoning and related permits and approvals, including but not limited to, the Community Development Director, Public Works Director, design review bodies, Staff Hearing Officer, Planning Commission, and City Council.

Right-of-Way. A strip of land acquired by reservation, easement, dedication, forced dedication, prescription or condemnation and intended to be occupied or occupied by a street, railroad, electric transmission lines, oil or gas pipeline, water line, sanitary storm sewer or other similar use.

28.81.190 "S"

Screen. *See Hedge.*

Second Floor. The floor above the first floor.

Second Story. The story above the first story.

Semi-Public Use. A facility that is open to the public and has a public purpose but is not owned or operated by a governmental entity.

Setback, Front. An area between the street and a line parallel to the front lot line, bounded by the interior lot lines of the lot that are roughly perpendicular to the front lot line. See also Section 28.04.060, Measuring Distances, and Section 28.04.100, Measuring Setbacks, and Section 28.40.100, Encroachments into Setbacks and Open Yards.

Setback, Interior. An area between an interior lot line and a line parallel to the interior lot line, bounded by the two lot lines adjacent to the interior lot line from which the setback is measured. See also Section 28.04.060, Measuring Distances, and Section 28.04.100, Measuring Setbacks, and Section 28.40.100, Encroachments into Setbacks and Open Yards.

Shopping Center. An integrated group of commercial establishments that are planned and managed together with a minimum of five attached businesses and shared onsite parking. Shopping Centers can include a variety of uses including, but not limited to: retail, eating and drinking establishments, small offices, and banks.

ATTACHMENT C

California Coastal Commission Letter dated January 10, 2017

CALIFORNIA COASTAL COMMISSION

SOUTH CENTRAL COAST AREA
89 SOUTH CALIFORNIA ST., SUITE 200
VENTURA, CA 93001
(805) 585-1800



January 10, 2017

City of Santa Barbara
Attn.: Renee Brooke, City Planner
630 Garden Street
Santa Barbara, CA 93102-1990

Re: Executive Director Determination for Proposed Short Term Vacation Rental at 128 Natoma Avenue

Dear Ms. Brooke:

We have reviewed your January 6, 2017 letter requesting a determination of hearing procedures pursuant to Santa Barbara Municipal Code (SBMC) Section 28.44.050.B.2, as to whether the conversion of an existing residential unit located at 128 Natoma Avenue to a short-term vacation rental (STVR) is categorically exempt from Coastal Development Permit (CDP) requirements. As described within the subject letter, the applicant asserts that a STVR is materially similar to a time-share unit, and that because Section 28.44.070 of the SBMC categorically exempts the conversion of an existing, multi-family residential unit to a time-share unit, the conversion of an existing residential unit to a STVR is also categorically exempt.

As the SBMC does not contain a definition of vacation rental, the City has indicated that it considers STVRs to be a use similar to that of a hotel. Based upon the definition of hotel in Section 28.04.395 of the SBMC, the City has also indicated that it considers a STVR to be a non-residential use that is only allowed in certain zones where commercial uses are allowed. As such, the City asserts that the conversion of the subject residential unit into a STVR requires a CDP because it is a change of use from residential to commercial.

The Executive Director agrees that conversion of a residence to a STVR does not qualify as a categorically excluded conversion pursuant to Section 28.44.070 of the SBMC because a STVR does not qualify as a time-share project, estate, or use, as defined in Section 11212 of the Business and Professions Code. However, we disagree with the City's current approach to consider residences used as STVRs as "hotel" uses (pursuant to the City's interpretation of the definition of "hotel" included in the SBMC) for the purpose of prohibiting or limiting STVRs in residential zones. Moreover, the City's certified LCP does not clearly provide that a CDP is required to use an existing single family residence or duplex as a STVR.

As the Commission described in its December 6, 2016 guidance letter on Short-Term/Vacation Rentals in the California Coastal Zone, "the Commission has found that vacation rental prohibitions unduly limit public recreational access opportunities inconsistent with the Coastal Act." See <https://documents.coastal.ca.gov/reports/2016/12/w7a-12-2016.pdf> (Attachment C). Furthermore, the City of Santa Barbara Land Use Plan (LUP) includes policy language that prioritizes visitor-serving recreational facilities, protects lower cost visitor and recreational

OTTA

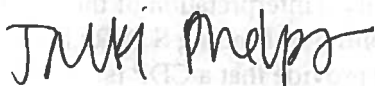
facilities, and prohibits removal or conversion of visitor-serving development in certain areas of the City. The LUP also includes several policies that protect coastal resources, including public access.

Due to their function as a high priority visitor-serving use, the Coastal Commission has generally interpreted local zoning ordinances in a broad fashion and found that short term rentals are a form of residential use, permitted by right, in any residentially zoned area unless such uses are specifically prohibited or otherwise restricted. Nonetheless, we also understand and appreciate that these uses may raise a number of neighborhood character and operational issues, such as site management, number of occupants, special events, parking, litter, and noise limits. As such, we support developing reasonable and balanced regulations that can be tailored to address the specific issues within your community to allow for STVRs, while providing appropriate regulation to ensure consistency with applicable laws. We believe that appropriate rules and regulations can address issues and avoid potential problems while complying with Coastal Act and LCP policies to promote public access and protect lower-cost visitor accommodations. Thus, we encourage the City to update its certified LCP to more clearly regulate STVRs in a manner that does not prohibit or unduly limit them.

In summary, the Executive Director agrees with the City's determination that the subject request to convert an existing residential unit to a STVR does not fall within the categorical exclusion for time share conversions pursuant to Section 28.44.070 of the SBMC. However, as described above, Commission staff believes that this request highlights the need for the City to process an LCP amendment to establish clear provisions and coastal development permit requirements that will allow for STVRs and regulate them in a manner consistent with the Coastal Act. As such, Commission staff would strongly recommend the City's pending Round Three LCP Local Assistance Grant include an evaluation of STVRs, as well as the creation of provisions to specifically address this topic.

We look forward to working with you to address the regulation of STVRs within the City. If you have any questions, please don't hesitate to contact our office.

Sincerely,



Jacqueline Phelps
Coastal Program Analyst

ATTACHMENT D

SBMC Chapter 28.88

Chapter 28.88

CONVERSION OF DWELLING UNITS TO CONDOMINIUMS, HOTELS OR SIMILAR USES

Sections:

| | | | |
|-----------|----------------------------------------------------------------------|-----------|--------------------------------------------------------------------------------------|
| 28.88.010 | Purpose. | 28.88.060 | Additional Submittals for Conversions to Condominiums or Hotel Units. |
| 28.88.020 | Community Apartments and Stock Cooperatives. | 28.88.070 | Acceptance of Reports. |
| 28.88.025 | Date of Conversion. | 28.88.080 | Copy to Buyers. |
| 28.88.028 | Permit Required; Exceptions. | 28.88.090 | Hearing. |
| 28.88.029 | Issuance of Permits. | 28.88.100 | Tenant Protection Provisions. |
| 28.88.030 | Requirements and Procedures. | 28.88.110 | Effect of Proposed Conversion on the City's Low- and Moderate-Income Housing Supply. |
| 28.88.040 | Physical Standards for Condominium Conversions. | 28.88.120 | Findings. |
| 28.88.045 | Conversions of Dwelling Units to Hotels or Similar Uses. | 28.88.130 | Maximum Number of Conversions. |
| 28.88.050 | Application Requirements for Condominium and Time Share Conversions. | | |
| 28.88.055 | Application Requirements for Conversions to Hotels or Similar Uses. | | |

28.88.010 Purpose.

A. To establish criteria for the conversion of existing multiple family rental housing to condominiums, community apartments, cooperative apartments, hotels or similar uses.

B. To reduce the impact of such conversions on residents in rental housing who may be required to relocate due to the conversion of apartments to condominiums, community apartments, and stock cooperatives, hotels or similar uses by providing procedures for notification and adequate time and assistance for such relocation.

C. To insure that the purchasers of converted housing have been properly informed as to the physical condition of the structure which is offered for purchase.

D. To insure that converted housing achieves high quality appearance and safety, and is consistent with the goals of the City's General Plan and conforms or is legally nonconforming with the density requirements of the General Plan's Land Use Element.

E. To attempt to balance the opportunity for housing ownership of all types, for all levels of income and in a variety of locations with the need to maintain a supply of rental housing which is adequate to meet the housing needs of the community.

F. To attempt to maintain a supply of rental housing for low and moderate income persons and families. (Ord. 4716, 1991; Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4014 §1, 1979; Ord. 4000 §2, 1979.)

28.88.020 Community Apartments and Stock Cooperatives.

Conversion to community apartments and stock cooperatives shall be subject to the same restrictions, conditions, and requirements as condominiums. All references to a "condominium" in this Chapter shall be deemed to include community apartment, and stock cooperative, except where specifically noted. (Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4000 §2, 1979.)

28.88.025 Date of Conversion.

As used in this Chapter, the "date of conversion" for condominium conversions shall mean the date the final or parcel map for the project is filed with the County Recorder following its approval by the Staff Hearing Officer or Planning Commission or, if an appeal is filed, by the City Council. For hotels or similar uses, the "date of conversion" is the date of issuance of the conversion permit by the Chief Building Official after the Staff Hearing Officer or Planning Commission, or the City Council on appeal, approves the conversion. (Ord. 5380, 2005; Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4048, 1980; Ord. 4000 §2, 1979.)

28.88.028 Permit Required; Exceptions.

A. **PERMIT REQUIRED.** No person, firm, corporation, partnership or other entity shall convert existing dwelling units to a condominium, hotel or similar use without first having said conversion approved by the Planning Commission or the City Council on appeal, and having been issued a conversion permit by the Chief Building Official. For conversions of dwelling units to condominium units, the body that shall serve as the Advisory Agency for the required subdivision, as specified in Section 27.03.010 of this Code, shall review the application for the conversion pursuant to this Chapter 28.88.

B. EXCEPTIONS TO REQUIREMENTS FOR CONVERSION PERMITS.

The following shall be exempt from the provisions of this Chapter:

1. A project creating a condominium, hotel or similar use and using no more than one (1) existing dwelling unit as part of said project shall not be considered a conversion. To qualify for this exception, the number of dwelling units on the project site shall not have been previously reduced by use of this exception clause. For the purposes of this exclusion, the number of existing dwelling unit(s) shall be determined on the date of application for the permit. If the project calls for destruction of the structure housing the dwelling unit(s), those units shall not be counted as existing unit(s).

2. A stock cooperative or community apartment which has received final approval from the California Department of Real Estate or has otherwise been legally created prior to the adoption date of the ordinance establishing this Chapter.

No exception under this Subsection shall affect the applicability of the Zoning Ordinance, the California Building Code as adopted and amended by the City, or other applicable ordinances or regulations. (Ord. 5451, Section 5, 2008; Ord. 5380, 2005; Ord. 4716, 1991; Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4000 §2, 1979.)

28.88.029 Issuance of Permits.

The Chief of Building and Zoning shall issue a conversion permit when he determines that:

A. The applicant has complied with all the applicable City or State regulations in effect at the time the conversion application was deemed to be complete, and

B. The applicant has complied with the conditions of approval.

Once issued, the conversion permit can be revoked only because of the failure of the applicant or his successors in interest to comply with the conditions of approval.

An approval shall expire if the tentative subdivision map expires. For hotels or similar uses, an approval shall expire in the same period of time as projects requiring a tentative map unless a conversion permit has been issued by the Chief of Building and Zoning. (Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4048, 1980; Ord. 4000 §2, 1979.)

28.88.030 Requirements and Procedures.

No existing building containing a dwelling unit shall be approved for conversion to a condominium or hotel unless it meets the standards set forth in the following requirements:

A. All residential buildings shall, on the date of conversion, be in compliance with the minimum standards of the Uniform Housing Code as adopted by the City of Santa Barbara and those of the State of California.

B. All buildings shall, on the date of conversion, be in compliance with the exit and occupancy requirements and the height and area requirements for the type of construction and occupancy involved as outlined in the California Building Code as adopted and amended by the City.

C. All buildings sought to be converted are, on the date of conversion, in all respects in compliance with the Zoning Ordinance and the goals and policies of the General Plan, or legally nonconforming therewith. Notwithstanding the provisions of Santa Barbara Municipal Code Section 28.87.030, any legally nonconforming building or buildings for which a condominium conversion application is approved may be remodeled or otherwise physically changed provided the changes do not increase or intensify the element of the building that is nonconforming.

D. All condominium projects differentiated from hotels or similar uses, shall be subject to all applicable provisions of the Subdivision Map Act and Title 27 of this Code.

E. Once a building permit has been issued, a building may not be converted unless the certificate of occupancy for the building was issued more than five (5) years prior to the date the owner files with the City an application for the approval of a tentative condominium map or conversion to a hotel or similar use, unless the building satisfies the City's requirements for new condominium construction. (Ord. 5451, Section 5, 2008; Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4000 §2, 1979.)

28.88.040 Physical Standards for Condominium Conversions.

To achieve the purpose of this article, the Staff Hearing Officer or Planning Commission, prior to the date of conversion, shall require that all condominium conversions conform to the Santa Barbara Municipal Code in effect at the time of approval except as otherwise provided in this Chapter. The Staff Hearing Officer or Planning Commission, prior to the date of conversion, shall require conformance with the standards of this section in approving an application for conversion.

A. **UNIT SIZE.** The enclosed living or habitable area of each unit shall be not less than 600 square feet.

B. **FIRE PREVENTION.**

1. **Smoke Detectors.** Each living unit shall be provided with approved detectors of products of combustion other than heat conforming to standards of the California Building Code as adopted and amended by the City, mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes.

2. **Maintenance of Fire Protection Systems.** All on-site fire hydrants, fire alarm systems, portable fire extinguishers, and other fire protective appliances shall be retained in an operable condition at all times, maintained by the Homeowner's Association and delineated in the Covenants, Conditions and Restrictions.

C. SOUND TRANSMISSION.

Wall and floor-ceiling assemblies shall conform to Title 25, California Code of Regulations, Section 1092, or its successor, or permanent mechanical equipment, including domestic appliances, which is determined by the Chief Building Official to be a potential source of vibration or noise, shall be shock mounted, isolated from the floor and ceiling, or otherwise installed in a manner approved by the Chief Building Official to lessen the transmission of vibration and noise. Floor covering may only be replaced by another floor covering that provides the same or greater insulation. The requirements of this paragraph shall not apply to a unit in a building with no other unit(s).

D. UTILITY METERING.

1. The consumption of gas and electricity within each unit shall be separately metered so that the unit owner can be separately billed for each utility. Each unit shall have its own electrical panel, or access thereto, for all electrical circuits which serve the unit. A gas shut-off valve shall be provided for each unit and for each gas appliance.

2. Each dwelling unit shall be served by a separate City water meter. An additional separate City meter shall be provided to serve the landscaped areas in projects that include five or more dwelling units.

3. All plumbing fixtures shall conform to the standards for water saving devices as contained in the Uniform Plumbing Code as adopted and amended by the City of Santa Barbara in Chapter 22.04 of this Code.

4. An exception to any requirement of this subsection may be granted by the Staff Hearing Officer or Planning Commission if the following requirements are met:

a. A licensed engineer has determined that compliance with the requirement cannot practically be accomplished and the applicant has included alternative measures to accomplish conservation equivalent to that which would be expected through compliance with the requirement;

b. The Public Works Director has reviewed the proposed exception and the proposed alternative measures and has concurred that equivalent conservation is likely to be accomplished as a result thereof. Measures proposed as alternatives to the water conservation requirements of this subsection may include, but are not limited to, installation of privately owned sub-meters on each dwelling unit, conversion of existing landscaped areas to conform with current standards for water conserving landscaping, and installation of additional separate City meters to serve groups of dwelling units.

E. PRIVATE STORAGE SPACE. Each unit shall have at least 200 cubic feet of enclosed weatherproofed and lockable private storage space, in addition to guest, linen, pantry, and clothes closets customarily provided. Such space shall be for the sole use of the unit owner. Such space shall be accessible from the garage or parking area for the units it serves.

F. LAUNDRY FACILITIES. A laundry area shall be provided in each unit; or if common laundry areas are provided, such facilities shall consist of not less than one automatic washer and dryer for each five units or fraction thereof.

G. CONDITION OF EQUIPMENT AND APPLIANCES. The applicant shall provide written certification to the buyer of each unit on the initial sale after conversion that any dishwashers, garbage disposals, stoves, refrigerators, hot water tanks, and air-conditioners that are provided are in working condition as of the close of escrow. At such time as the Homeowner's Association takes over management of the development, the applicant shall provide written certification to the Association that any pool and pool equipment and any appliances and mechanical equipment to be owned in common by the Association is in working condition.

H. PUBLIC EASEMENTS. The applicant shall make provisions for the dedication of land or easements for street widening, public access or other public purpose in connection with the project where necessary and in accordance with established planned improvements.

I. REFURBISHING AND RESTORATION. All main buildings, structures, fences, patio enclosures, carports, accessory buildings, sidewalks, driveways, landscaped areas, irrigation systems, and additional elements as required by the Staff Hearing Officer or Planning Commission shall be refurbished and restored as necessary to achieve high quality appearance and safety.

J. PARKING STANDARDS. The off-street parking requirements for a conversion project shall be one and one-half (1½) parking spaces per unit for one bedroom or efficiency units and two (2) parking spaces per unit for units containing two or more bedrooms.

K. PHYSICAL ELEMENTS. Any physical element identified in the Physical Elements Report as having a useful life of less than two (2) years shall be replaced.

L. OUTDOOR LIVING SPACE. Outdoor living space for a conversion project shall be provided as required in MC §28.21.081.

M. HANDICAPPED ACCESSIBILITY AND ADAPTABILITY. All conversions involving five or more units shall meet the accessibility and adaptability requirements of the State Housing and Community Development Commission.

N. EXCEPTIONS. The Staff Hearing Officer or Planning Commission may grant an exception to the physical standards set forth in Subsections A, E, F, J, L, and M of this Section if it makes any of the following findings:

1. The economic impact of meeting the standard is not justified by the benefits of doing so.
2. The project includes design features or amenities which offset the project's failure to meet the standard.
3. The project includes provisions for low-, or moderate-income sales restrictions on the converted units beyond what is otherwise required in this Chapter that offset the project's failure to meet the standard.
4. The project's proximity to public open space could partially offset the project's lack of on-site open space. (Ord. 5451, Section 5, 2008; Ord. 5380, 2005; Ord. 4716, 1991; Ord. 4606, 1989; Ord. 4000 §2, 1979.)

28.88.045 Conversions of Dwelling Units to Hotels or Similar Uses.

Conversion of existing dwelling units to hotels or similar uses in the R-4 Zone and zones in which R-4 uses are allowed shall be subject to all applicable Sections of this Chapter and of Chapter 28.21 of this Code. In addition, the following standards shall apply:

A. **LIGHTING.** All outdoor lighting shall be hooded or shielded so that no direct beams fall on adjacent property. When outdoor lighting is provided, indirect soft lighting and low garden lighting shall be used whenever possible, and shall be required as necessary to assure compatibility with adjacent and surrounding properties.

B. **PARKING.** Off-street parking shall be provided as required in Chapter 28.90 or Subsection 28.88.045.C.5 of this Chapter if applicable, subject to Subsection 28.88.120.I.4 of this Chapter.

C. **TIME SHARE PROJECTS.** If a proposed time share project retains kitchens in the individual units, they shall be subject to all physical standards under Section 28.88.040 of this Code. The conversion of a dwelling unit to a time share project, wherein the converted unit consists of a suite of no more than two (2) rooms and provides no individual kitchens or cooking facilities is exempt from the following Subsections of Section 28.88.040:

1. 28.88.040A. Unit Size;
2. 28.88.040D.1. Utility metering, if a water shut-off valve is provided for each unit or for each plumbing fixture in that unit;
3. 28.88.040E. Private Storage Space;
4. 28.88.040F. Laundry Facilities; and
5. 28.88.040J. Parking Standards, provided that there shall be provided one-and-one quarter (1 ¼) spaces for each unit. This requirement may be modified if the applicant can demonstrate that additional parking is not needed.

D. **USE OF AMENITIES - TIME SHARE PROJECTS.**

A provision shall be included in the "Declaration of Time Share Plan" or similar instrument restricting the use of the project or its amenities by individual owners/users of a unit to the period of the time share interval(s) or right-to-use. (Ord. 4716, 1991; Ord. 4606, 1989; Ord. 4199, 1983)

28.88.050 Application Requirements for Condominium and Time Share Conversions.

In addition to such other application requirements as the Staff Hearing Officer or Planning Commission may deem necessary and those requirements as set forth in Section 28.88.030 above, no application for a conversion to condominiums or time share projects shall be accepted for any purpose unless the application includes the following:

- A. A development plan of the project including:
1. The location, height, gross floor area, and proposed uses for each existing structure to remain and for each proposed new structure;
 2. The location, use, and type of surfacing for all open storage areas;
 3. The location and type of surfacing for all driveways, pedestrian ways, vehicle parking areas, and curb cuts;
 4. The location, height, and type of materials for walls or fences;
 5. The location of all landscaped areas, the type of landscaping, and a statement specifying the method by which the landscaped areas shall be maintained;
 6. The location and description of all recreational facilities and a statement specifying the method of the maintenance thereof;
 7. The location and size of the parking facilities to be used in conjunction with each unit;
 8. The location, type and size of all drainage pipes and structures depicted or described to the nearest public drain or watercourse;
 9. The location and type of the nearest fire hydrants;
 10. The location, type and size of all on-site and adjacent street overhead utility lines;
 11. A lighting plan of the project;
 12. Existing and proposed exterior elevations;
 13. The location of any provisions for any unique natural or vegetative features.
- B. A physical elements report which shall include but not be limited to:
1. A report detailing the condition and estimating the remaining useful life of each element of the project proposed for conversion: roofs, foundations, exterior paint, paved surfaces, mechanical systems, electrical systems, plumbing systems, including sewage systems, swimming pools, sprinkler systems for landscaping, utility delivery systems, central or community heating and air-conditioning systems, fire protection systems including automatic sprinkler systems, alarm systems, or standpipe systems, and structural elements. Such report shall be prepared by an appropriately licensed contractor or architect or by a registered civil or structural engineer other than the owner. For any element whose useful life is less than five (5) years, a replacement cost estimate shall be provided.
 2. A structural pest control report. Such report shall be prepared by a licensed structural pest control operator pursuant to Section 8516 of the Business and Professions Code.
 3. A building history report including the following:
 - a. The date of construction of all elements of the project;
 - b. A statement of the major uses of said project since construction;

c. The date and description of each major repair or renovation of any structure or structural element since the date of construction. For the purposes of this subsection a "major repair" shall mean any repair for which an expenditure of more than \$1,000 was made;

d. Statement regarding current ownership of all improvements and underlying land;

e. Failure to provide information required by subsections a. through d., inclusive, shall be accompanied by an affidavit, given under penalty of perjury, setting forth reasonable efforts undertaken to discover such information and reasons why such information cannot be obtained. (Ord. 5380, 2005; Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4000 §2, 1979.)

28.88.055 Application Requirements for Conversions to Hotels or Similar Uses.

In addition to such other application requirements as the Planning Commission may deem necessary and those requirements as set forth in Section 28.88.030 of this Code, no application for conversion of a building containing a dwelling unit to a hotel or similar use shall be accepted for any purpose unless the application includes a development plan of the project containing:

A. The location, height, gross floor area, and proposed uses for each existing structure to remain and for each proposed new structure;

B. The location and type of surfacing for all driveways, pedestrian ways, vehicle parking areas, and curb cuts;

C. The location, use, and type of surfacing for all open storage areas;

D. The location, height, and type of materials for walls or fences;

E. The location of all landscaped areas, the type of landscaping, and any proposed changes thereto;

F. The location and description of all recreational and other hotel-related facilities, and any proposed changes thereto;

G. The location and size of the parking facilities to be used in conjunction with each guest room and other related uses on-site;

H. A drainage plan for the site;

I. A lighting plan of the project;

J. Existing and proposed exterior elevations; and

K. The location of and provisions for any unique natural or vegetative site features. (Ord. 4606, 1989; Ord. 4199, 1983.)

28.88.060 Additional Submittals for Conversions to Condominiums or Hotel Units.

A. A statement of any unique provisions of the proposed Covenants, Conditions and Restrictions which would be applied on behalf of any and all owners of condominium units within the project. With regard to stock cooperatives, this submission shall consist of a summary of proposed management, occupancy and maintenance policies on forms approved by the City Attorney.

B. Specific information concerning the characteristics of any conversion project, including but not limited to the following:

1. Square footage and number of rooms in each existing and proposed unit or guest room;

2. Rental rate history for each type of unit for previous five (5) years;

3. Monthly vacancy rate for each month during preceding two (2) years;

4. Makeup of existing tenant households, including family size, length of residence, age of tenants, and whether receiving federal or state rent subsidies;

5. Names and addresses of all tenants; and

6. Applications for conversion to time share projects shall include the length of every time share interval and maintenance period.

When the developer can demonstrate that such information is not available, this requirement may be modified by the Community Development Department.

C. The developer shall submit evidence that notification of intent to convert was sent to each tenant in accordance with Section 28.88.100.

D. Any other information which, in the opinion of the Community Development Department, will assist in determining whether the proposed project will be consistent with the purposes of this article. (Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4000 §2, 1979.)

28.88.070 Acceptance of Reports.

The final form of the Physical Elements Report and other documents shall be as approved by the Chief Building Official. The reports in their acceptable form shall remain on file with the Community Development Department for review by any interested persons. The report shall be referenced in the subdivision report to the Staff Hearing Officer or Planning Commission. (Ord. 5380, 2005; Ord. 4606, 1989; Ord. 4000 §2, 1979.)

B. The proposed conversion is consistent with the General Plan of the City of Santa Barbara or legally nonconforming with the density requirement of its Land Use Element.

C. The proposed conversion will conform to the Santa Barbara Municipal Code in effect at the time the application was deemed to be complete, except as otherwise provided in this Chapter.

D. The overall design (including project amenities) and physical condition of the conversion will result in a project which is aesthetically attractive, safe and of quality construction.

E. If required by Subsection 28.88.110 A above, the proposed conversion has mitigated impacts to the City's low and moderate income housing supply through an agreement to record affordability control covenants on the specified number of units.

F. The applicant has not engaged in coercive retaliatory action regarding the tenants after the submittal of the first application for City review through the date of approval. In making this finding, consideration shall be given to:

1. Rent increases at a rate greater than the rate of increase in the Consumer Price Index (all items, Los Angeles - Long Beach) unless provided for in leases or contracts in existence prior to the submittal of the first application for City review, or

2. Any other action by applicant which is taken against tenants to coerce them to refrain from opposing the project. An agreement with tenants which provides for benefits to the tenants after the approval shall not be considered a coercive or retaliatory action.

G. The owner has made a reasonable effort to assist those tenants wishing to purchase their units for purposes of minimizing the direct effect on the rental housing market created by relocating such tenants.

H. The requirements of Section 28.88.130 have been met.

I. The following additional findings shall be made by the Staff Hearing Officer or Planning Commission in order to approve conversions to hotels or similar uses:

1. The use will not be materially detrimental to the public peace, health, safety, comfort and general welfare and will not materially decrease property values in the neighborhood involved;

2. The total area of the site and the setbacks and location of all facilities in relation to property and street lines are adequate in view of the characteristics of the site.

3. The conversion will not have a significant adverse impact on the surrounding properties.

4. Adequate access and off-street parking, including parking for guests and employees, are provided so that there is no adverse impact on the character of the public streets in the neighborhood. (Ord. 5380, 2005; Ord. 4716, 1991; Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4014, 1979; Ord. 4000, 1979.)

28.88.130 Maximum Number of Conversions.

A. MAXIMUM NUMBER OF CONVERSIONS.

1. Annual Quota. The maximum number of conversions to condominiums to be approved during any calendar year shall not exceed the greater of:

a. fifty (50) units; or

b. the number of unassisted new dwelling units in two family and multiple family rental projects issued certificates of occupancy during the previous calendar year minus the number of dwelling units in two family and multiple family rental units to be demolished pursuant to permits issued in that same year.

2. In the event that the annual conversion quota determined pursuant to paragraph 1 of this Subsection A exceeds the aggregate number of units approved for conversion to condominiums during any year any excess shall be available in the following twelve (12) month period for conversions to hotels or similar uses only, after which time any remaining excess shall not be included in the annual conversion quota permitted for any following year.

3. A condominium project consisting of more dwelling units than the maximum number which can be approved in the applicable calendar year, may be approved for a phased conversion. The approval of a phased conversion shall specify the number of units which may be converted in each year (which number may not exceed the annual conversion quota for that year), and shall specify that the units approved for conversion in a given year shall have priority for conversion over units in other projects approved for conversion in that year.

B. PROCESSING OF APPLICATIONS. Applications shall be processed in accordance with procedures established by resolution of the City Council setting forth the manner and method of prioritizing applications for conversions.

C. EXCEPTIONS.

1. This section shall not be applicable to:

a. A project consisting of four (4) or less units.

b. A project as to which the tenants of more than fifty percent (50%) of the rental units have made a commitment to purchase their units.

c. A project involving conversions for a non or limited equity cooperative or condominium for low-to-moderate income residents.

d. A project involving the conversion of dwelling units which, at the time the application for condominium conversion was filed, were legally rented as hotel units.

e. A project involving conversions in which not less than 75% of the dwelling units are subject to the City's standard affordability controls. (Ord. 4716, 1991; Ord. 4606, 1989; Ord. 4199, 1983; Ord. 4014 §1, 1979; Ord. 4000 §2, 1979.)

ATTACHMENT E

NZO Chapter 28.43

Chapter 28.43 Conversion of Residential Units to Condominiums, Hotels, or Similar Uses

28.43.010 Purpose

- A. To establish criteria for the conversion of existing housing to condominiums, community apartments, cooperative apartments, hotels or similar uses.
- B. To reduce the impact of such conversions on residents who may be required to relocate due to the conversion of residential units to condominiums, community apartments, and stock cooperatives, hotels or similar uses by providing procedures for notification and adequate time and assistance for such relocation.
- C. To ensure that the purchasers of converted housing have been properly informed as to the physical condition of the structure which is offered for purchase.
- D. To ensure that converted housing achieves high quality appearance and safety, and is consistent with the goals of the City's General Plan and conforms or is legally non-conforming with the density requirements of the General Plan's Land Use Element.
- E. To attempt to balance the opportunity for housing ownership of all types, for all levels of income and in a variety of locations with the need to maintain a supply of rental housing which is adequate to meet the housing needs of the community.
- F. To attempt to maintain a supply of rental housing for low and moderate income persons and families.

28.43.020 Community Apartments and Stock Cooperatives

Conversion to community apartments and stock cooperatives shall be subject to the same restrictions, conditions, and requirements as condominiums. All references to a "condominium" in this Chapter shall be deemed to include community apartment, and stock cooperative, except where specifically noted.

28.43.030 Date of Conversion

As used in this Chapter, the "date of conversion" for condominium conversions shall mean the date the final or parcel map for the project is filed with the County Recorder following its approval by the Staff Hearing Officer or Planning Commission or, if an appeal is filed, by the City Council. For hotels or similar uses, the "date of conversion" is the date of issuance of the conversion permit by the Community Development Director after the Staff Hearing Officer or Planning Commission, or the City Council on appeal, approves the conversion.

28.43.040 Permit Required; Exceptions

- A. **Permit Required.** No applicant shall convert existing residential units to a condominium, hotel or similar use without first having said conversion approved by the

Planning Commission or the City Council on appeal, and having been issued a conversion permit by the Community Development Director. For conversions of residential units to condominium units, the body that shall serve as the Advisory Agency for the required subdivision, as specified in Section 27.03.010 of the Santa Barbara Municipal Code, shall review the application for the conversion pursuant to this Chapter.

B. Exceptions to Requirements for Conversion Permits. The following shall be exempt from the provisions of this Chapter:

1. A project creating a condominium, hotel or similar use and using no more than one existing residential unit as part of said project shall not be considered a conversion. To qualify for this exception, the number of residential units on the project site shall not have been previously reduced by use of this exception clause. For the purposes of this exclusion, the number of existing residential unit(s) shall be determined on the date of application for the permit. If the project calls for destruction of the structure housing the residential unit(s), those units shall not be counted as existing unit(s).
2. A stock cooperative or community apartment which has received final approval from the California Department of Real Estate or has otherwise been legally created prior to the adoption date of the ordinance establishing this Chapter.

No exception under this Subsection shall affect the applicability of the Zoning Ordinance, the California Building Code as adopted and amended by the City, or other applicable ordinances or regulations.

28.43.050 Issuance of Permits

- A. The Community Development Director shall issue a conversion permit with a determination that:
 1. The applicant has complied with all the applicable City or State regulations in effect at the time the conversion application was deemed to be complete, and
 2. The applicant has complied with the conditions of approval.
- B. Once issued, the conversion permit can be revoked only because of the failure of the applicant or successors in interest to comply with the conditions of approval.
- C. An approval shall expire if the tentative subdivision map expires. For hotels or similar uses, an approval shall expire in the same period of time as projects requiring a tentative map unless a conversion permit has been issued by the Community Development Director.

28.43.060 Requirements and Procedures

No existing building containing a residential unit shall be approved for conversion to a condominium or hotel unless it meets the standards set forth in the following requirements:

- A. All residential buildings shall, on the date of conversion, be in compliance with the minimum Housing Code standards as adopted by the City of Santa Barbara and those of the State of California.
- B. All buildings shall, on the date of conversion, be in compliance with the exit and occupancy requirements and the height and area requirements for the type of construction and occupancy involved as outlined in the California Building Code as adopted and amended by the City.
- C. All buildings sought to be converted are, on the date of conversion, in all respects in compliance with this Title and the goals and policies of the General Plan, or legally nonconforming therewith. Notwithstanding the provisions of Chapter 28.45, Nonconforming Structures, Site Development and Uses, any legally nonconforming building or buildings for which a condominium conversion application is approved may be remodeled or otherwise physically changed provided the changes do not increase or intensify the element of the building that is nonconforming.
- D. All condominium projects differentiated from hotels or similar uses, shall be subject to all applicable provisions of the Subdivision Map Act and Title 27 of the Santa Barbara Municipal Code.
- E. Once a building permit has been issued, a building may not be converted unless the certificate of occupancy for the building was issued more than five years prior to the date the owner files with the City an application for the approval of a tentative condominium map or conversion to a hotel or similar use, unless the building satisfies the City's requirements for new condominium construction.

28.43.070 Physical Standards for Condominium Conversions

To achieve the purpose of this Chapter, the Staff Hearing Officer or Planning Commission, prior to the date of conversion, shall require that all condominium conversions conform to the Santa Barbara Municipal Code in effect at the time of approval except as otherwise provided in this Chapter. The Staff Hearing Officer or Planning Commission, prior to the date of conversion, shall require conformance with the standards of this Section in approving an application for conversion.

- A. **Unit Size.** The enclosed livable area of each unit shall be not less than 600 square feet.
- B. **Fire Prevention.**
 - 1. **Smoke Detectors.** Each living unit shall be provided with approved detectors of products of combustion other than heat conforming to standards of the California Building Code as adopted and amended by the City, mounted on the ceiling or wall at a point centrally located in the corridor or area giving access to rooms used for sleeping purposes.
 - 2. **Maintenance of Fire Protection Systems.** All on-site fire hydrants, fire alarm systems, portable fire extinguishers, and other fire protective appliances

shall be retained in an operable condition at all times, maintained by the Homeowner's Association and delineated in the Covenants, Conditions and Restrictions.

- C. **Sound Transmission.** Wall and floor-ceiling assemblies shall conform to Title 25, California Code of Regulations, Section 1092, or its successor, or permanent mechanical equipment, including domestic appliances, which is determined by the Chief Building Official to be a potential source of vibration or noise, shall be shock mounted, isolated from the floor and ceiling, or otherwise installed in a manner approved by the Chief Building Official to lessen the transmission of vibration and noise. Floor covering may only be replaced by another floor covering that provides the same or greater insulation. The requirements of this paragraph shall not apply to a unit in a building with no other unit(s).
- D. **Utility Metering.**
1. The consumption of gas and electricity within each unit shall be separately metered so that the unit owner can be separately billed for each utility. Each unit shall have its own electrical panel, or access thereto, for all electrical circuits which serve the unit. A gas shut-off valve shall be provided for each unit and for each gas appliance.
 2. Each residential unit shall be served by a separate City water meter. An additional separate City meter shall be provided to serve the landscaped areas in projects that include five or more residential units.
 3. All plumbing fixtures shall conform to the standards for water saving devices as contained in the Uniform Plumbing Code as adopted and amended by the City of Santa Barbara in Chapter 22.04 of the Santa Barbara Municipal Code.
 4. An exception to any requirement of this subsection may be granted by the Staff Hearing Officer or Planning Commission if the following requirements are met:
 - a. A licensed engineer has determined that compliance with the requirement cannot practically be accomplished and the applicant has included alternative measures to accomplish conservation equivalent to that which would be expected through compliance with the requirement;
 - b. The Public Works Director has reviewed the proposed exception and the proposed alternative measures and has concurred that equivalent conservation is likely to be accomplished as a result thereof. Measures proposed as alternatives to the water conservation requirements of this subsection may include, but are not limited to, installation of privately owned sub-meters on each residential unit, conversion of existing landscaped areas to conform with current standards for water conserving landscaping, and installation of additional separate City meters to serve groups of residential units.

- E. **Private Storage Space.** Each unit shall have at least 200 cubic feet of enclosed weatherproofed and lockable private storage space, in addition to guest, linen, pantry, and clothes closets customarily provided. Such space shall be for the sole use of the unit owner. Such space shall be accessible from the garage or parking area for the units it serves.
- F. **Laundry Facilities.** A laundry area shall be provided in each unit; or if common laundry areas are provided, such facilities shall consist of not less than one automatic washer and dryer for each five units or fraction thereof.
- G. **Condition of Equipment and Appliances.** The applicant shall provide written certification to the buyer of each unit on the initial sale after conversion that any dishwashers, garbage disposals, stoves, refrigerators, hot water tanks, and air-conditioners that are provided are in working condition as of the close of escrow. At such time as the Homeowner's Association takes over management of the development, the applicant shall provide written certification to the Association that any pool and pool equipment and any appliances and mechanical equipment to be owned in common by the Association is in working condition.
- H. **Public Easements.** The applicant shall make provisions for the dedication of land or easements for street widening, public access or other public purpose in connection with the project where necessary and in accordance with established planned improvements.
- I. **Refurbishing and Restoration.** All main buildings, structures, fences, patio enclosures, carports, accessory buildings, sidewalks, driveways, landscaped areas, irrigation systems, and additional elements as required by the Staff Hearing Officer or Planning Commission shall be refurbished and restored as necessary to achieve high quality appearance and safety.
- J. **Parking Standards.** Off-street parking for a conversion project shall be provided pursuant to Table 28.47.040, Required Off-Street Parking Spaces. Covered parking and guest parking is not required.
- K. **Physical Elements.** Any physical element identified in the Physical Elements Report as having a useful life of less than two years shall be replaced.
- L. **Open Yard.** Open Yard for a conversion project shall be provided as required in Section 28.40.150, Open Yards.
- M. **Accessibility and Adaptability.** All conversions involving five or more units shall meet the accessibility and adaptability requirements of the State Housing and Community Development Commission.
- N. **Exceptions.** The Staff Hearing Officer or Planning Commission may grant an exception to the physical standards set forth in Subsections A, Unit Size; E, Private Storage Space; F, Laundry Facilities; J, Parking Standards; L, Open Yard; and M, Accessibility and Adaptability, of this Section if it makes any of the following findings:

1. The economic impact of meeting the standard is not justified by the benefits of doing so;
2. The project includes design features or amenities which offset the project's failure to meet the standard;
3. The project includes provisions for low-, or moderate-income sales restrictions on the converted units beyond what is otherwise required in this Chapter that offset the project's failure to meet the standard; or
4. The project's proximity to public open space could partially offset the project's lack of on-site open space.

28.43.080 Conversions of Residential Units to Hotels or Similar Uses

Conversion of existing residential units to hotels or similar uses is allowed in any zone in which Hotels and Extended Stay Hotels are allowed by right or by use permit, subject to all applicable Sections of this Chapter and of Chapter 28.07, Residential Zones. In addition, the following standards shall apply:

- A. **Lighting.** All outdoor lighting shall be hooded or shielded so that no direct beams fall on adjacent property. When outdoor lighting is provided, indirect soft lighting and low garden lighting shall be used whenever possible, and shall be required as necessary to assure compatibility with adjacent and surrounding properties.
- B. **Parking.** Off-street parking shall be provided as required in Chapter 28.47, Parking Regulations, or Subsection 28.43.080(C)(5), below, if applicable, subject to the findings for approval of conversions to hotels or similar uses in Subsection 28.43.170(I)(4).
- C. **Time-Share Projects.** If a proposed time-share project retains kitchens in the individual units, they shall be subject to all physical standards under Section 28.43.070, Physical Standards for Condominium Conversions. The conversion of a residential unit to a time-share project, wherein the converted unit consists of a suite of no more than two rooms and provides no individual kitchens or cooking facilities is exempt from the following Subsections of Section 28.43.070, Physical Standards for Condominium Conversions:
 1. 28.43.070(A) Unit Size;
 2. 28.43.070(D)(1) Utility Metering, if a water shut-off valve is provided for each unit or for each plumbing fixture in that unit;
 3. 28.43.070(E) Private Storage Space;
 4. 28.43.070(F) Laundry Facilities; and
 5. 28.43.070(J) Parking Standards, provided that parking for Hotels and Extended Stay Hotels pursuant to Table 28.47.040, Required Off-Street Parking Spaces, is provided. This requirement may be modified if the applicant can demonstrate that additional parking is not needed, pursuant to Chapter 28.67, Modifications

- D. **Use of Amenities – Time-Share Projects.** A provision shall be included in the "Declaration of Time-Share Plan" or similar instrument restricting the use of the project or its amenities by individual owners/users of a unit to the period of the time-share interval(s) or right-to-use.

28.43.090 Application Requirements for Condominium and Time Share Conversions

In addition to such other application requirements as the Staff Hearing Officer or Planning Commission may deem necessary and those requirements as set forth in Section 28.43.060, Requirements and Procedures, no application for a conversion to condominiums or time share projects shall be accepted for any purpose unless the application includes the following:

- A. A conversion plan of the project including:
1. The location, height, floor area, and proposed uses for each existing structure to remain and for each proposed new structure;
 2. The location, use, and type of surfacing for all open storage areas;
 3. The location and type of surfacing for all driveways, pedestrian ways, vehicle parking areas, and curb cuts;
 4. The location, height, and type of materials for walls or fences;
 5. The location of all landscaped areas, the type of landscaping, and a statement specifying the method by which the landscaped areas shall be maintained;
 6. The location and description of all recreational facilities and a statement specifying the method of the maintenance thereof;
 7. The location and size of the parking facilities to be used in conjunction with each unit;
 8. The location, type and size of all drainage pipes and structures depicted or described to the nearest public drain or watercourse;
 9. The location and type of the nearest fire hydrants;
 10. The location, type and size of all on-site and adjacent street overhead utility lines;
 11. A lighting plan of the project;
 12. Existing and proposed exterior elevations;
 13. The location of any provisions for any unique natural or vegetative features.
- B. A physical elements report which shall include but not be limited to:
1. A report detailing the condition and estimating the remaining useful life of each element of the project proposed for conversion: roofs, foundations, exterior paint, paved surfaces, mechanical systems, electrical systems, plumbing systems, including sewage systems, swimming pools, sprinkler systems for landscaping, utility delivery systems, central or community heating and air-con-

ditioning systems, fire protection systems including automatic sprinkler systems, alarm systems, or standpipe systems, and structural elements. Such report shall be prepared by an appropriately licensed contractor or architect or by a registered civil or structural engineer other than the owner. For any element whose useful life is less than five years, a replacement cost estimate shall be provided.

2. A structural pest control report. Such report shall be prepared by a licensed structural pest control operator pursuant to Section 8516 of the Business and Professions Code.
3. A building history report including the following:
 - a. The date of construction of all elements of the project;
 - b. A statement of the major uses of said project since construction;
 - c. The date and description of each major repair or renovation of any structure or structural element since the date of construction. For the purposes of this subsection a "major repair" shall mean any repair for which an expenditure of more than \$1,000 was made;
 - d. Statement regarding current ownership of all improvements and underlying land; and
 - e. Failure to provide information required by subsections a. through d., inclusive, shall be accompanied by an affidavit, given under penalty of perjury, setting forth reasonable efforts undertaken to discover such information and reasons why such information cannot be obtained.

28.43.100 Application Requirements for Conversions to Hotels or Similar Uses

In addition to such other application requirements as the Planning Commission may deem necessary and those requirements as set forth in Section 28.43.060, Requirements and Procedures, no application for conversion of a building containing a residential unit to a hotel or similar use shall be accepted for any purpose unless the application includes a conversion plan of the project containing:

- A. The location, height, floor area, and proposed uses for each existing structure to remain and for each proposed new structure;
- B. The location and type of surfacing for all driveways, pedestrian ways, vehicle parking areas, and curb cuts;
- C. The location, use, and type of surfacing for all open storage areas;
- D. The location, height, and type of materials for walls or fences;
- E. The location of all landscaped areas, the type of landscaping, and any proposed changes thereto;

- F. The location and description of all recreational and other hotel-related facilities, and any proposed changes thereto;
- G. The location and size of the parking facilities to be used in conjunction with each guestroom and other related uses on-site;
- H. A drainage plan for the site;
- I. A lighting plan of the project;
- J. Existing and proposed exterior elevations; and
- K. The location of and provisions for any unique natural or vegetative site features.

28.43.110 Additional Submittals for Conversions to Condominiums or Hotel Units

- A. A statement of any unique provisions of the proposed Covenants, Conditions and Restrictions which would be applied on behalf of any and all owners of condominium units within the project. With regard to stock cooperatives, this submission shall consist of a summary of proposed management, occupancy and maintenance policies on forms approved by the City Attorney.
- B. Specific information concerning the characteristics of any conversion project, including but not limited to the following:
 - 1. Square footage and number of rooms in each existing and proposed unit or guestroom;
 - 2. Rental rate history for each type of unit for previous five years;
 - 3. Monthly vacancy rate for each month during preceding two years;
 - 4. Makeup of existing tenant households, including family size, length of residence, age of tenants, and whether receiving federal or state rent subsidies;
 - 5. Names and addresses of all tenants; and
 - 6. Applications for conversion to time-share projects shall include the length of every time-share interval and maintenance period.

When the developer can demonstrate that such information is not available, this requirement may be modified by the Community Development Director.

- C. The developer shall submit evidence that notification of intent to convert was sent to each tenant in accordance with Section 28.43.150, Tenant Protection Provisions.
- D. Any other information which, in the opinion of the Community Development Director, will assist in determining whether the proposed project will be consistent with the purposes of this Chapter.

28.43.120 Acceptance of Reports

The final form of the Physical Elements Report and other documents shall be as approved by the Chief Building Official. The reports in their acceptable form shall remain on file with the

Community Development Director for review by any interested persons. The report shall be referenced in the subdivision report to the Staff Hearing Officer or Planning Commission.

28.43.130 Copy to Buyers

The seller shall provide each purchaser of a condominium or time-share unit with a copy of all reports (in their final, acceptable form), along with the Department of Real Estate Final Subdivision Public Report, when required, except the information required by Subsections B. and C. of Section 28.43.110, Additional Submittals for Conversions to Condominiums or Hotel Units, prior to the purchaser completing an escrow agreement or other contract to purchase a unit in the project, and the developer shall give the purchaser sufficient time to review the reports. Copies of the reports shall be made available at all times at the sales office and shall be posted at various locations, as approved by the City, at the project site.

28.43.140 Hearing

- A. **Tenant Notice.** Prior to action on the application, the Staff Hearing Officer or Planning Commission shall hold a hearing. Notice of the hearing shall be mailed at least ten days prior to the hearing date to tenants of the proposed conversion and posted on the property. The public hearing notice shall include, in addition to the notice of the time and place of the public hearing, notification of the tenant's rights to appear and be heard.
- B. **Staff Report.** Any report or recommendation from the staff on a proposed tentative map for a residential condominium conversion submitted to the Staff Hearing Officer or Planning Commission or City Council on appeal shall be in writing and a copy shall be sent to the subdivider at least six calendar days prior to any hearing or action on the map by the Staff Hearing Officer or Planning Commission and City Council. The subdivider shall be responsible for providing a copy of any such report to each tenant of the subject property at least three days prior to any hearing or action on such map by the Staff Hearing Officer, Planning Commission or City Council.

28.43.150 Tenant Protection Provisions

- A. **Notice of Intent.** A notice of intent to convert shall be provided to each tenant a minimum of 60 days prior to the filing of the application for Tentative Map approval.
 - 1. **Method.** Notice shall be provided either by
 - a. Personal delivery, or
 - b. Mailing the notice, postage prepaid, by certified letter with return receipt requested.
 - 2. **Content.** The form of the notice shall be as approved by the Community Development Director and shall contain at a minimum the following:
 - a. Name and address of current owner;
 - b. Name and address of the proposed subdivider;

- c. Approximate date on which the tentative map/conversion permit application is proposed to be filed;
 - d. Tenant's right to purchase condominium, if applicable;
 - e. Tenant's right of notification to vacate;
 - f. Tenant's right of termination of lease;
 - g. Statement of limitations on rent increase;
 - h. An explanation of all provisions made by the subdivider for special cases;
 - i. An explanation of all provisions made by the subdivider for moving expenses of displaced tenants;
 - j. Tenant's right to receipt of notice for each hearing and right to appear and be heard at any such hearing; and
 - k. Other information as may be deemed necessary by the Community Development Director.
3. ***Evidence of Compliance.*** Evidence of compliance with this Section shall be submitted with the application for conversion.

B. Tenant's Right to Purchase.

1. As provided in Government Code Section 66427.1(d) any present tenant or tenants of any unit shall be given an exclusive right to contract for the purchase of the unit occupied or equivalent unit at a price no greater than the price offered to the general public or terms more favorable to the tenant, whichever is less. The exclusive right to contract shall extend for at least 90 days from the date of issuance of the Subdivision Public Report or commencement of sales, whichever date is later, unless the tenant gives prior written notice of their intention not to exercise the right.
2. In addition, the present tenant or tenants shall have the right of first refusal to purchase the unit occupied or equivalent unit at the same price as that offered by a buyer and accepted by the applicant, whenever such accepted price is lower than the price required to be offered to the tenant under Paragraph 1, above. The tenant must exercise the tenant's right of first refusal within 45 days of receipt of notice from the applicant.
3. If the tenant exercises their right to purchase under this Subsection, then the applicant is not required to provide moving expenses as outlined in Subsection G, below, except to the extent required by State law.
4. The manner in which any exclusive right to contract or right of first refusal shall be exercised shall be in accordance with regulations established by resolution of the City Council. This Subsection does not apply to conversions to hotels or similar uses.

- C. **Vacation of Units.** Each non-purchasing tenant, not in default under the obligations of the rental agreement or lease under which the unit is occupied, shall have not less than 180 days from the date of approval of the conversion by the Staff Hearing Officer or Planning Commission or, if an appeal is filed, by the City Council, to find substitute housing and to relocate. Applicant shall give written notice of the approval containing an explanation of any and all conditions of approval which affect the tenants to each tenant within 15 days of the approval. Such notice shall be prepared in accordance with procedures established by resolution of the City Council setting forth the manner and contents of such notice.
- D. **Tenant's Right of Termination of Lease.** Any present tenant or tenants of any unit shall be given the right to terminate their lease or rental agreement without penalty, following the receipt of the notification from the owner of the intent to convert.
- E. **Special Cases.** For purposes of this Section, a "special case" tenant is one who is over age 62, qualifies as a disabled person pursuant to section 295.5 of the Vehicle Code, low income pursuant to the City's Affordable Housing Policies and Procedures, a single parent with custody of minor children, or otherwise likely to experience difficulty finding suitable replacement housing. The subdivider shall afford special consideration to each "special case" tenant which special consideration, at a minimum, shall include the following:
1. Each "special case" tenant shall be allowed an additional period of time, not exceeding six months beyond the period specified in Subsection C, above, in which to relocate.
 2. A tenant with school age children shall not be required to vacate the unit prior to the end of the school year in which the 180-day period specified in Subsection C, above, begins to run.
- F. **Increase in Rents.** From the date of approval of the application to convert until the date of conversion, no tenant's rent shall be increased more frequently than once annually nor at a rate greater than the rate of increase in the Consumer Price Index (all items, Los Angeles – Long Beach), on an annualized basis, for the same period. This limitation shall not apply if rent increases are provided for in leases or contracts in existence prior to the filing date of the application to convert.
- G. **Moving Expenses.** The subdivider shall provide moving expenses of four (4) times the median advertised rental rent or \$5,000, whichever is greater, to any tenant who relocates from the building to be converted after approval of the condominium conversion by the City, except when the tenant has given notice of intent to move prior to receipt of notification from the subdivider of the intent to convert.
- H. **Notice to New Tenants.** After the issuance of the Notification of Intent to Convert, any prospective tenants shall be notified in writing of the intent to convert prior to leasing or renting any unit and shall not be subject to the provisions of subsections B.2, F and G. The form of the notice shall be as approved by the Community Development Director, subject to Government Code Section 66452.8(b) and 66452.8(c). Failure by a subdivider to give such notice shall not be grounds to deny the proposed

conversion. Further, the subdivider shall pay to each prospective tenant who becomes a tenant and who was entitled to such notice, and who did not receive such notice, an amount equal to the sum of:

1. Actual moving expenses incurred when moving from the subject property, but not to exceed \$2,000, and
 2. The first month's rent on the tenant's new rental unit, if any, immediately after moving from the subject property, but not to exceed \$2,000.
- I. **Notice of Final Map.** Each of the tenants of the proposed condominium conversion shall be given written notification within ten days of approval of a final map for the proposed conversion and proof of such notification shall be submitted to the Public Works Director.
- J. **Notice of Department of Real Estate Report.** Each of the tenants of the proposed condominium conversion shall be given written notification that an application for a public report will be, or has been submitted to the Department of Real Estate, and that such report will be available upon request.

28.43.160 Effect of Proposed Conversion on the City's Low- and Moderate-Income Housing Supply

- A. If any of the units in the project have been "affordable rental units" for at least 24 of the previous 48 months preceding the conversion application, the application for condominium conversion may be approved only if a condition is imposed requiring that the same number and type of units in the project after conversion will be subject to a recorded affordability covenant placing maximum sales price limits on each such unit in accordance with the City's affordability criteria. For purposes of this Chapter, "affordable rental unit" shall be defined by resolution of the City Council. All units subject to this affordability restriction shall be owner-occupied, except as otherwise set forth by Council resolution. Any such units that are retained by the original owner and not sold shall be subject to affordable rental restrictions as defined by resolution of the City Council.
- B. If the Staff Hearing Officer or Planning Commission determines that vacancies in the project have been increased for the purpose of preparing the project for conversion, the conversion shall be disapproved. In evaluation of the current vacancy level under this subsection, the increase in rental rates for each unit over the preceding five years and the average monthly vacancy rate for the project over the preceding two years shall be considered.

28.43.170 Required Findings

The Staff Hearing Officer or Planning Commission shall not approve an application for condominium conversion unless the Staff Hearing Officer or Planning Commission finds that:

- A. All provisions of this Chapter are met and the project will not be detrimental to the health, safety, and general welfare of the community.

- B. The proposed conversion is consistent with the General Plan of the City of Santa Barbara or legally nonconforming with the density requirement of its Land Use Element.
- C. The proposed conversion will conform to the Santa Barbara Municipal Code in effect at the time the application was deemed to be complete, except as otherwise provided in this Chapter.
- D. The overall design (including project amenities) and physical condition of the conversion will result in a project which is aesthetically attractive, safe and of quality construction.
- E. If required by Subsection 28.43.160(A), above, the proposed conversion has mitigated impacts to the City's low and moderate income housing supply through an agreement to record affordability control covenants on the specified number of units.
- F. The applicant has not engaged in coercive retaliatory action regarding the tenants after the submittal of the first application for City review through the date of approval. In making this finding, consideration shall be given to:
 - 1. Rent increases at a rate greater than the rate of increase in the Consumer Price Index (all items, Los Angeles – Long Beach) unless provided for in leases or contracts in existence prior to the submittal of the first application for City review, or
 - 2. Any other action by applicant which is taken against tenants to coerce them to refrain from opposing the project. An agreement with tenants which provides for benefits to the tenants after the approval shall not be considered a coercive or retaliatory action.
- G. The owner has made a reasonable effort to assist those tenants wishing to purchase their units for purposes of minimizing the direct effect on the rental housing market created by relocating such tenants.
- H. The requirements of Section 28.43.180, Maximum Number of Conversions, have been met.
- I. The following additional findings shall be made by the Staff Hearing Officer or Planning Commission in order to approve conversions to hotels or similar uses:
 - 1. The use will not be materially detrimental to the public peace, health, safety, comfort and general welfare and will not materially decrease property values in the neighborhood involved;
 - 2. The total area of the site and the setbacks and location of all facilities in relation to property and street lines are adequate in view of the characteristics of the site.
 - 3. The conversion will not have a significant adverse impact on the surrounding properties.

4. Adequate access and off-street parking, including parking for guests and employees, are provided so that there is no adverse impact on the character of the public streets in the neighborhood.

28.43.180 Maximum Number of Conversions

A. Maximum Number of Conversions.

1. **Annual Quota.** The maximum number of conversions to condominiums to be approved during any calendar year shall not exceed the greater of:
 - a. Fifty units; or
 - b. The number of market-rate new residential units in two-unit and multi-unit rental projects issued certificates of occupancy during the previous calendar year minus the number of residential units in two-unit and multi-unit rental units to be demolished pursuant to permits issued in that same year.
2. In the event that the annual conversion quota determined pursuant to paragraph 1, above, exceeds the aggregate number of units approved for conversion to condominiums during any year any excess shall be available in the following 12-month period for conversions to hotels or similar uses only, after which time any remaining excess shall not be included in the annual conversion quota permitted for any following year.
3. A condominium project consisting of more residential units than the maximum number which can be approved in the applicable calendar year, may be approved for a phased conversion. The approval of a phased conversion shall specify the number of units which may be converted in each year (which number may not exceed the annual conversion quota for that year), and shall specify that the units approved for conversion in a given year shall have priority for conversion over units in other projects approved for conversion in that year.

B. Processing of Applications. Applications shall be processed in accordance with procedures established by resolution of the City Council setting forth the manner and method of prioritizing applications for conversions.

C. Exceptions.

1. This section shall not be applicable to:
 - a. A project consisting of four or less units.
 - b. A project as to which the tenants of more than 50 percent of the rental units have made a commitment to purchase their units.
 - c. A project involving conversions for a non or limited equity cooperative or condominium for low-to-moderate income residents.
 - d. A project involving the conversion of legally rented hotel guestrooms at the time the application for condominium conversion was filed.

- e. A project involving conversions in which not less than 75 percent of the residential units are subject to the City's standard affordability controls.